

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KNIGHTS OF COLUMBUS STAR OF THE
SEA COUNCIL 7297,

Plaintiff,

v.

CITY OF REHOBOTH BEACH,
DELAWARE;

PAUL KUHNS, individually and in his
official capacity as Mayor of Rehoboth
Beach, Delaware;

SHARON LYNN, individually and in her
official capacity as City Manager of Rehoboth
Beach, Delaware;

Defendants.

Civil Case. No.

**COMPLAINT
DEMAND FOR JURY TRIAL**

Plaintiff Knights of Columbus Star of the Sea Council 7297 (“Knights of Columbus”) brings this action against the City of Rehoboth Beach, Delaware (“the City”) and its officials to protect its rights to free speech, religious liberty, and the equal protection of the laws guaranteed by the First and Fourteenth Amendments to the United States Constitution. The Knights of Columbus, by and through its undersigned attorneys, alleges as follows:

INTRODUCTION

1. This case raises important issues under the First and Fourteenth Amendments to the United States Constitution. As a member of the Rehoboth Beach, Delaware community (“the community”), the Knights of Columbus wishes to participate in the decades-long tradition of displaying both religious and secular displays at the City’s Bandstand Circle—a public entertainment venue—during the Christmas holiday season. The “Bandstand Circle” is the eastern

terminus of Rehoboth Avenue that encircles the City’s bandstand and includes the adjacent portion of the boardwalk.

2. The Knights of Columbus sincerely believes that Christmas is an important religious holiday. As part of that sincerely held belief, the Knights of Columbus believes that it should display a crèche—or nativity scene—at the Bandstand Circle in order to express the religious meaning of the holiday, as at least one other private organization is permitted to do with secular holiday displays.

3. On information and belief, since the 1930s, a crèche—or nativity scene—has been displayed in the Rehoboth Beach community during the Christmas holiday season. The traditional location of the crèche is at the Bandstand Circle. The Knights of Columbus is not aware of a single complaint about the crèche across its eight-decade history.

4. But beginning in 2018, the City decided to prohibit all holiday displays that are religious in nature as a matter of City policy.

5. The City continues to permit private organizations, like the Rehoboth Beach-Dewey Beach Chamber of Commerce (“the Chamber”), to erect holiday displays on City property, provided that the displays are secular in nature.

6. But the City has prohibited the Knights of Columbus from erecting and displaying the crèche on City land because the crèche expresses a religious viewpoint.

7. Instead, the City proposed that the Knights of Columbus display the crèche on property leased and controlled by the Chamber—a private organization. But the Chamber’s property is located over a half mile from the community’s holiday displays at the Bandstand Circle.

8. By relegating the crèche to an isolated tract of privately controlled land—while allowing a private group to display a secular holiday display on City property—the City has prohibited the Knights of Columbus from participating in the community’s decades-long holiday tradition on equal terms. The City has done so solely because the crèche is religious.

9. The City’s policy—both facially and as applied—violates the First and Fourteenth Amendments in three respects.

10. First, the City's policy violates the First Amendment's free speech guarantee, which prohibits the government from categorically excluding religious perspectives and viewpoints on topics that are otherwise permitted in a public forum.

11. Second, the City's policy unlawfully targets and impermissibly burdens the Knights of Columbus's religious practices in violation of the Free Exercise Clause of the First Amendment.

12. Third, the City's policy discriminates against the Knights of Columbus on the basis of religion in violation of the Equal Protection Clause of the Fourteenth Amendment.

13. For these reasons, and as set forth below, the Court should enjoin the City's anti-religion policy and compel the City to allow the Knights of Columbus to display the crèche and participate in the community's decades-long tradition of secular and religious displays at the Bandstand Circle during the Christmas season in the same manner and with the same opportunities as other private groups.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this case presents a federal question concerning a deprivation of constitutional rights, *see* 42 U.S.C. § 1983.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as this is the district in which substantial events giving rise to the Complaint occurred, and in which all Defendants reside.

PARTIES

16. Plaintiff, Knights of Columbus Star of the Sea Council 7297, is a local council of the Catholic fraternal service organization, the Knights of Columbus ("Knights of Columbus National"), a corporation duly organized and existing under the laws of the State of Connecticut, with its principal place of business in New Haven, Connecticut. Knights of Columbus Star of the Sea Council 7297 is headquartered in Rehoboth Beach, Delaware.

17. Defendant City of Rehoboth Beach, Delaware is a local government entity within the State of Delaware, with its principal place of business at 229 Rehoboth Avenue, Rehoboth Beach, Delaware 19971.

18. Defendant Paul Kuhns (“Defendant Kuhns”) is the Mayor of the City of Rehoboth Beach, Delaware. He is sued in his individual and official capacities. Mayor Kuhns maintains an office at 229 Rehoboth Avenue, P.O. Box 1163, Rehoboth Beach, Delaware 19971.

19. Defendant Sharon Lynn (“Defendant Lynn”) is the City Manager of Rehoboth Beach, Delaware. She is sued in her individual and official capacities. Defendant Lynn maintains an office at 229 Rehoboth Avenue, P.O. Box 1163, Rehoboth Beach, Delaware 19971.

STATEMENT OF FACTS

I. The Knights of Columbus

20. The Knights of Columbus is affiliated with the City’s local Roman Catholic Church, Saint Edmond. Reverend William Cocco (“Rev. Cocco”), the Pastor of Saint Edmond Church, serves as the chaplain of the Knights of Columbus.

21. For the last forty years, the Knights of Columbus has been a major participant in the life of the Rehoboth Beach community. As part of its commitment to serving the local community, the Knights of Columbus organizes multiple charitable events each year.

22. In recent years, the Knights of Columbus has held golf tournaments to benefit homeless veterans; hosted a pancake breakfast to raise funds for Habitat for Humanity; and co-sponsored the Block House Run, a track event for physically and cognitively challenged youths.

23. The Knights of Columbus also regularly sponsors themed dinners and Sunday breakfasts throughout the year to raise funds for local non-profit organizations, including the YMCA summer camp, Rehoboth Little League, Warrior Weekend, the Women’s Home of the Brave, and Toys for Tots.

24. Each year, the Knights of Columbus runs a Tootsie Roll Drive to raise money for charities that work with individuals with intellectual disabilities. In 2017, the Knights of Columbus donated its proceeds to the Special Olympics as well as three local charities that benefit individuals with intellectual disabilities. In 2018, the Knights of Columbus donated its proceeds to organizations including the Special Olympics and Chimes Delaware, one of the largest Delaware providers of community services for adults with intellectual and developmental

disabilities. And in 2019, the Knights of Columbus donated its proceeds to the Special Olympics and three local organizations dedicated to serving the needs of people with intellectual disabilities.

25. The Knights of Columbus has also undertaken an annual coat drive to collect coats and cash donations for students in need. Last year, the Knights of Columbus donated 150 winter coats to the Cape Henlopen School District.

26. Each spring, the Knights of Columbus organizes a food drive to support charities that benefit low income families, veterans, and the homeless. Last year, the Knights of Columbus collected over 10,000 pounds of nonperishable foods as well as cash donations to be distributed to these charities. This year, though interrupted by the COVID-19 pandemic, the Knights of Columbus collected over 3,250 pounds of nonperishable food and cash donations for these charities.

27. This spring, the Knights of Columbus donated funds to the Beebe Medical Foundation in Lewes, Delaware to help provide personal protective equipment for healthcare workers responding to the COVID-19 pandemic.

28. In recognition of its charitable contributions to the Rehoboth Beach community, the Knights of Columbus has been honored by Knights of Columbus National at least five times over the last ten years. In 2019, the Knights of Columbus received a cash award in recognition of its charitable works, and it donated this award to charities that help the hungry and homeless.

II. The Community's Holiday Displays

29. The Rehoboth Beach community has a long history of celebrating the Christmas season with both secular and religious holiday displays by private groups at the Bandstand Circle—a public entertainment venue on Rehoboth Avenue.

30. The Bandstand Circle is a popular commercial site where the Rehoboth Beach community comes together. Over time, it has become the primary location of the community's holiday traditions. Each year, residents of the Rehoboth Beach community visit the Bandstand Circle and the boardwalk to view the holiday displays and participate in the community's celebration of the Christmas season.

31. The annual holiday displays include a crèche, a Christmas tree, holiday lights and light displays, and a large Santa's House.

32. The Santa's House features prominently in the community's holiday displays, and it is displayed each year on the boardwalk, immediately across from the bandstand. The boardwalk is City property.

33. The Santa's House is large enough to hold two adults—including one adult dressed as Santa Claus—and at least one child at a time. The Santa's House is erected, sponsored, displayed, and owned by the Chamber, a private organization.

34. Below is a photo of the Santa's House, taken from the bandstand, during the 2019 Christmas season. This photo is also attached to the Complaint as Exhibit A.



35. Traditionally, the crèche was displayed each year on the median at the Bandstand Circle. The median sits directly across from the boardwalk where the Santa’s House is displayed.

36. While construction and renovation—including the addition of a bus stop and bathrooms—have altered the Bandstand Circle in recent years, below is a map depicting the approximate traditional location of the crèche and the location of the Santa’s House at the Bandstand Circle during the Christmas holiday season. This map is also attached to the Complaint as Exhibit B.



III. The Crèche

37. On information and belief, beginning in the 1930s, the crèche was displayed at the Bandstand Circle each Christmas season as part of the community's annual holiday tradition. The Knights of Columbus is not aware of any complaints about the crèche in its entire eight-decade history.

38. For many years, the Kiwanis Club of Coastal Delaware, a local public service club, owned the crèche and placed it at the Bandstand Circle each year.

39. In 2018, the Knights of Columbus took on the role of displaying the crèche each Christmas season. The Knights of Columbus believes that Christmas is an important religious holiday. That sincerely held belief motivates the Knights of Columbus to display the crèche as part of the other holiday displays at the Bandstand Circle and the boardwalk in order to express the religious meaning of the holiday.

40. Although the crèche's traditional location is at the Bandstand Circle, in recent years, the City erected a new public restroom and carried out renovations at the Bandstand Circle.

During the construction, which was completed prior to 2018, the crèche was temporarily moved to an alternate location on Rehoboth Avenue.

41. On December 2, 2018, Rev. Cocco asked Defendant Kuhns and Defendant Lynn for permission to place the crèche back at the Bandstand Circle for the 2018 holiday season.

42. Based on Defendant Kuhns's and Defendant Lynn's comments, Rev. Cocco understood that the Knights of Columbus could put up the crèche as long as other religious groups were offered the opportunity to be a part of the display.

43. Saint Edmond Church contacted Seaside Jewish Community Center, Faith United Methodist Church, and Lewes Rehoboth Association of Churches, but none of these groups expressed an interest in being a part of the holiday display.

44. Believing that the City's request to include other religious groups had been satisfied, the Knights of Columbus placed the crèche on the median at the Bandstand Circle on December 4, 2018.

IV. The City's 2018 Order to Remove the Crèche

45. The following day, Defendant Lynn called Saint Edmond Church and ordered that the crèche be removed. Defendant Lynn stated that the Knights of Columbus did not have permission to put up the crèche unless all religious communities were represented.

46. The Knights of Columbus was surprised by the City's sudden demand. But confronted with the unequivocal terms of the City's order, the Knights of Columbus had no choice but to comply with the City's mandate. The Knights of Columbus accordingly removed the crèche on December 6, 2018.

47. Defendant Lynn prohibited the Knights of Columbus from displaying a crèche on City property during the 2018 Christmas season because a crèche is a religious symbol.

48. Defendant Lynn acted in accordance with City policy when she prohibited the Knights of Columbus from displaying a crèche on City property during the 2018 Christmas season because a crèche is a religious symbol.

49. Many Rehoboth Beach residents were unhappy with the City's decision to remove the crèche, so the City addressed its policy and decision at subsequent City Council meetings in December of 2018.

50. During the December 7, 2018 meeting of the City Board of Commissioners, Defendant Kuhns addressed the removal of the crèche by reading aloud a letter the City reportedly received from the Anti-Defamation League. The letter discouraged the City from allowing any religious displays during the holiday season. The only religious display specifically referenced by the letter, as read by Defendant Kuhns, was a crèche or nativity scene. *See* The Commissioners of Rehoboth Beach Special Workshop Meeting, 6:00–8:30 (Dec. 7, 2018), <https://cityofrehoboth.civicweb.net/document/32218?splitscreen=true&media=true>.

51. Defendant Kuhns's purpose for reading aloud the letter was to explain that he and the City would not allow the Knights of Columbus to display the crèche on City property because the crèche is a religious symbol.

52. In a subsequent meeting, Defendant Lynn told Fr. Cocco that, as long as she is the City Manager, the crèche will not be allowed on City property.

53. During the December 10, 2018 meeting of the City Board of Commissioners, Defendant Kuhns again addressed the removal of the crèche, stating:

Singular displays of this sort are more appropriately placed on private property. . . . The City would like to avoid appearing to endorse or disapprove of any one type of religion. . . . The City has no issue whatsoever about the local Catholic Church, St. Edmond's, placing the nativity scene on their property, which has a very prominent place on King Charles Avenue. I believe this is the best solution at this point in time.

The Commissioners of Rehoboth Beach Workshop Meeting, 9:55–12:55 (Dec. 10, 2018), <https://cityofrehoboth.civicweb.net/document/32218?splitscreen=true&media=true>.

54. Defendant Kuhns prohibited the Knights of Columbus from displaying a crèche on City property during the 2018 Christmas season because a crèche is a religious symbol.

55. Defendant Kuhns acted in accordance with City policy when he prohibited the Knights of Columbus from displaying a crèche on City property during the 2018 Christmas season because a crèche is a religious symbol.

56. Because of the City's policy against religious displays, the Knights of Columbus was prohibited from displaying the crèche on City property with the other secular holiday displays during the 2018 Christmas season.

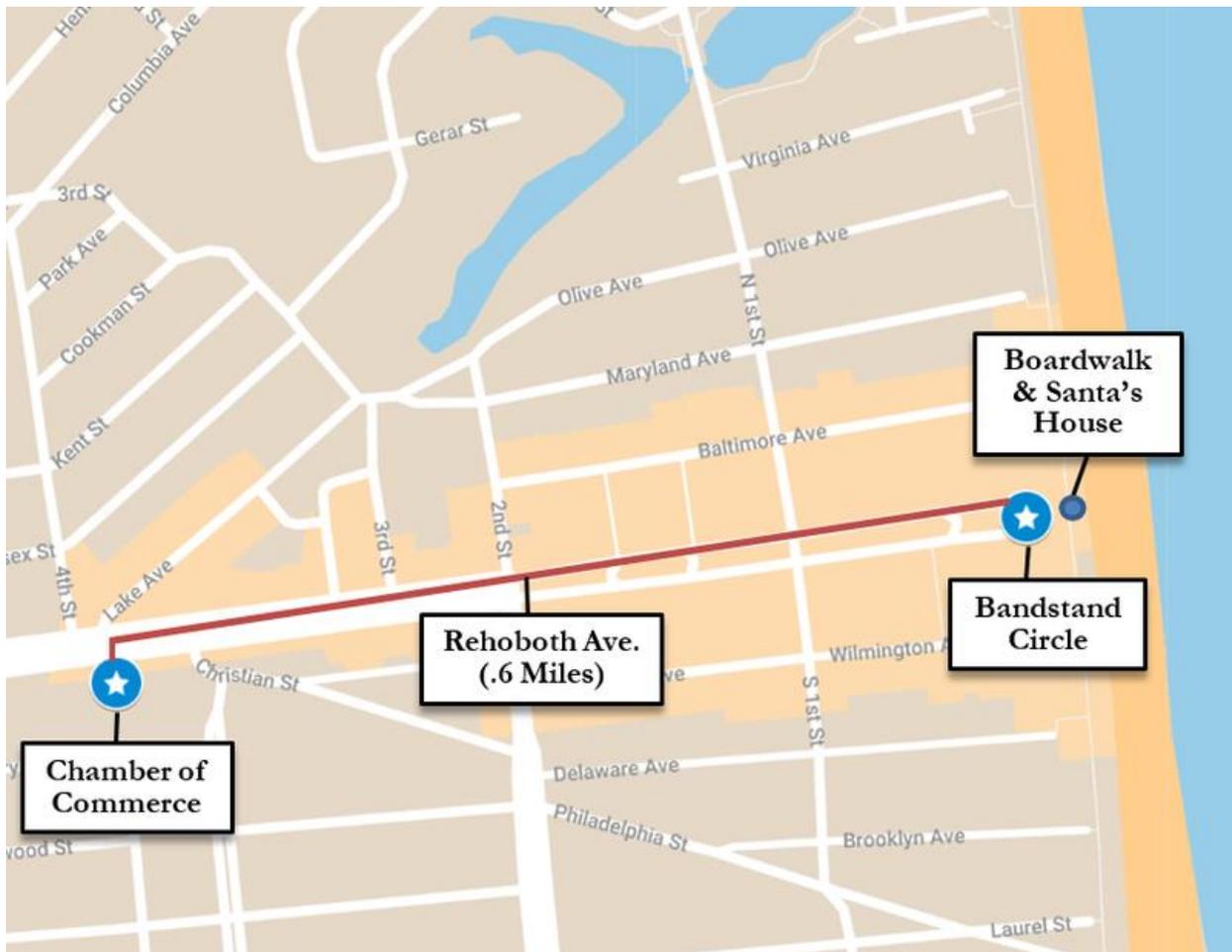
57. Rather than pursue litigation, the Knights of Columbus hoped to reach a resolution with the City that would allow it to participate in the community's holiday tradition on equal terms in future years.

V. The City's 2019 Decision to Prohibit the Crèche

58. On October 22, 2019, Defendant Lynn sent Rev. Cocco a letter with the subject line "Religious displays during the 2019 holiday season." Ex. C, Oct. 22, 2019 Letter from Sharon Lynn to Rev. William Cocco. In that letter, she stated that the Chamber—a private organization—had agreed to offer its property at 306 Rehoboth Avenue "as a suitable location for the creche [sic] display." *Id.*

59. But the Chamber's property is located over one half mile from the Bandstand Circle, and it is completely removed from the community's traditional holiday displays—including the Santa's House—which are located predominately at the Bandstand Circle.

60. Below is a map depicting the locations of the Bandstand Circle, the Santa's House, and the Chamber's property. This map is also attached to the Complaint as Exhibit D.



61. On November 18, 2019, during a local television interview regarding the City’s controversial decision to remove the crèche from the Bandstand Circle, Defendant Kuhns reiterated the City’s anti-religion policy. He stated: “[The Church] got kind of upset about the fact that we weren’t allowing it there, but **the city policy is not to have religious displays on public property.**” Deana Harley, *Rehoboth Beach says no nativity scene allowed on boardwalk*, WMDT (Nov. 18, 2019) (video at 00:55), <https://www.wmdt.com/2019/11/rehoboth-beach-says-no-nativity-scene-allowed-on-boardwalk/> (emphasis added).

62. In a December 1, 2019 email, as reported by a local newspaper, “[Defendant Kuhns] said there’s no chance Rehoboth will change its mind about allowing a nativity scene on city property.” Chris Flood, *No Nativity for Georgetown’s Circle this year*, Cape Gazette (Dec. 3,

2019), <https://www.capegazette.com/article/no-nativity-georgetown%E2%80%99s-circle-year/193736>.

63. Defendant Kuhns prohibited the Knights of Columbus from displaying a crèche on City property during the 2019 Christmas season because a crèche is a religious symbol.

64. Defendant Kuhns acted in accordance with City policy when he prohibited the Knights of Columbus from displaying a crèche on City property during the 2019 Christmas season because a crèche is a religious symbol.

65. Seeking to participate in the community's holiday traditions on equal terms, the Knights of Columbus emailed Defendant Lynn in late November and early December of 2019 to ask whether, during the upcoming holiday season, the crèche could be placed on the median at the Bandstand Circle, where the Knights of Columbus had placed it in 2018.

66. Without providing any explanation, Defendant Lynn responded that the location was not available. *See* Ex. E, Nov. & Dec. 2019 Email Correspondence Between Sharon Lynn and the Knights of Columbus.

67. On December 3, 2019, the Knights of Columbus again emailed Defendant Lynn, this time asking whether the crèche could be placed on the boardwalk, as the Chamber of Commerce was permitted to do with the Santa's House. The Knights of Columbus noted that there would be "plenty of room" to place the crèche near the large Santa's House that was already displayed on the boardwalk. Ex. F, Dec. 2019 Email Correspondence Between Sharon Lynn and the Knights of Columbus; *see also* Ex. A (depicting the open space alongside the Santa's House on the boardwalk).

68. The following day, Defendant Lynn emailed the Knights of Columbus, stating: "The Boardwalk is public property. Unfortunately the crèche can not [sic] be placed there." Ex. F. Defendant Lynn did not provide any reason for her decision to prohibit the crèche while allowing the Santa's House to remain on the boardwalk.

69. Seeking to clarify the City's policy, the Knights of Columbus emailed Defendant Lynn on December 5, 2019 and asked: "The Knights can't put the creche [sic] on the Boardwalk or other public property because it's religious. Is that right?" *Id.*

70. Defendant Lynn replied: "Yes correct." *Id.*

71. Defendant Lynn prohibited the Knights of Columbus from displaying a crèche on City property during the 2019 Christmas season because a crèche is a religious symbol.

72. Defendant Lynn acted in accordance with City policy when she prohibited the Knights of Columbus from displaying a crèche on City property during the 2019 Christmas season because a crèche is a religious symbol.

73. Hoping to resolve this matter short of litigation, on December 12, 2019, the Knights of Columbus sent Defendant Kuhns and Defendant Lynn a demand letter, which set forth its position that the City's anti-religion policy violated the First Amendment.

74. The City Solicitor, Glenn Mandalas, responded to the Knights of Columbus's letter on December 13, 2019. The City refused to change its policy prohibiting religious displays on public land and accordingly refused to permit the Knights of Columbus to display the crèche on City property during the 2019 Christmas holiday season.

75. All acts set forth herein of the City, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color and pretense of state law and pursuant to the City's policies, practices, and/or customs.

76. The City's policy on private displays requires its officials or employees to assess the reason or purpose for a display before it is allowed on City property.

77. The City's actions have caused, and will continue to cause, the Knights of Columbus to suffer undue and actual hardship and irreparable injury, and the Knights of Columbus has no adequate remedy at law to correct the continuing deprivations of its rights.

78. The City's failure to adopt lawful, clear, and concise written policies which protect the rights of the Knights of Columbus caused the unlawful and discriminatory treatment by Defendants.

79. The City’s failure to properly train, direct, control, and supervise the actions and conduct of its officers, agents, servants, employees, or persons acting at its behest or direction, which failure amounted to deliberate indifference, resulted in the violation of the Knights of Columbus’s constitutional and other rights.

80. The City’s failure to act to stop or remedy the unlawful actions of its officers, agents, servants, employees, or persons acting at its behest or direction, amounted to deliberate indifference and endorsement, adoption, and ratification of those unlawful actions and the violation of the Knights of Columbus’s constitutional and other rights.

81. The City failed to repudiate or discipline, and failed to immediately act to remedy, the unlawful and discriminatory actions and unlawful conduct set forth herein.

CLAIMS FOR RELIEF

Count I – Violation of the United States Constitution Viewpoint Discrimination in Violation of the First and Fourteenth Amendments

82. The Knights of Columbus realleges and incorporates by reference the allegations contained in all of the preceding paragraphs as though set forth fully herein.

83. Title 42 U.S.C. § 1983 provides a right of action to redress federal constitutional violations caused by officials acting under color of state law.

84. The First Amendment to the United States Constitution—as incorporated by the Fourteenth Amendment—provides that the government “shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. While the “government may sometimes impose content or speaker limitations that protect the use of its property[,] . . . viewpoint discrimination is out of bounds.” *Ne. Pa. Freethought Soc’y v. Cty. of Lackawanna Transit Sys.*, 938 F.3d 424, 432 (3d Cir. 2019). Thus, “if government permits the discussion of a topic from a secular perspective, it may not shut out speech that discusses the same topic from a religious perspective.” *Child Evangelism Fellowship of N.J. Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 528 (3d Cir. 2004).

85. As Justice Gorsuch recently explained, “once the government declares Christmas open for commentary, it can hardly turn around and mute religious speech on a subject that so

naturally invites it.” *Archdiocese of Washington v. Washington Metro. Area Transit Auth.*, No. 18-1455, 2020 WL 1668292, at *1 (U.S. Apr. 6, 2020) (Gorsuch, J., statement respecting denial of certiorari); *see also id.* (endorsing the Third Circuit’s reasoning in *Freethought Society*).

86. The City’s policy of prohibiting religious messages on public property—both facially and as applied—constitutes viewpoint-based discrimination in violation of the Free Speech Clause of the First Amendment.

87. By prohibiting private organizations from displaying religious holiday messages on City property, while simultaneously allowing private organizations to display secular holiday messages, Defendants’ policy facially discriminates against religious viewpoints in violation of the First Amendment.

88. By prohibiting the Knights of Columbus from displaying a crèche at the Bandstand Circle or the boardwalk, while simultaneously allowing the Chamber to display a Santa’s House on the boardwalk, Defendants’ policy, as applied, discriminates against the Knights of Columbus’s religious viewpoint on the Christmas season in violation of the First Amendment.

89. At the time of Defendants’ unconstitutional actions, it was clearly established in the Third Circuit that, “if government permits the discussion of a topic from a secular perspective, it may not shut out speech that discusses the same topic from a religious perspective.” *Evangelism Fellowship*, 386 F.3d at 528.

90. The Defendants’ actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, were and are unlawful viewpoint discrimination, unlawfully impose and imposed overbroad restrictions on the Knights of Columbus’s speech, constitute and constituted an unlawful prior restraint that grants unbridled discretion to government officials, and unconstitutionally condition and conditioned a government benefit on the relinquishment of a First Amendment right.

91. The Defendants’ actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, do and did unlawfully chill, deter, and restrict the Knights of Columbus’s speech.

92. The Defendants' actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, are not supported by a compelling government interest and are not narrowly tailored or the least restrictive means to accomplish a compelling government interest.

93. As a direct and proximate result of Defendants' actions, the Knights of Columbus has suffered and will suffer irreparable harm, including the loss of its constitutional rights, entitling the Knights of Columbus to declaratory, injunctive, and monetary relief.

**Count II – Violation of the United States Constitution
Violation of the Knights of Columbus's Free Exercise Rights**

94. The Knights of Columbus realleges and incorporates by reference the allegations contained in all of the preceding paragraphs as though set forth fully herein.

95. Title 42 U.S.C. § 1983 provides a right of action to redress federal constitutional violations caused by officials acting under color of state law.

96. The First Amendment to the United States Constitution—as incorporated by the Fourteenth Amendment—provides that the government “shall make no law . . . prohibiting the free exercise [of religion].” U.S. Const. amend. I. Where a government law or policy “is not neutral (*i.e.*, if it discriminates against religiously motivated conduct) or is not generally applicable (*i.e.*, if it proscribes particular conduct only or primarily when religiously motivated), strict scrutiny applies and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.” *Tenafly Eruv Ass’n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002).

97. Defendants' actions, policies, practices, and/or customs of prohibiting religious messages on public property—both facially and as applied—violates the Free Exercise Clause of the First Amendment.

98. On its face, the City's policy of prohibiting religious displays on public property is not neutral or generally applicable because it substantially burdens the religious beliefs, practice, and exercise of religious individuals and organizations whose faith motivates them to express their

sincerely held beliefs through holiday displays, but imposes no such burden on similarly-situated non-religious individuals or organizations.

99. As applied, Defendants' decision to prohibit the crèche from display on City property is not neutral or generally applicable and substantially burdens the religious belief and exercise of the Knights of Columbus. The Knights of Columbus believes that Christmas is an important religious holiday. This sincerely held religious belief motivates the Knights of Columbus to display the crèche with the other holiday displays at the Bandstand Circle and the boardwalk in order to convey the religious message of the Christmas holiday. Defendants' decision to prohibit the crèche has not merely substantially burdened, but utterly prevented, the Knights of Columbus from engaging in this particular religious exercise.

100. Defendants' actions, policies, practices, and/or customs of prohibiting religious messages on public property furthers no compelling governmental interest and is not narrowly tailored to advance any compelling governmental interest.

101. At the time of Defendants' unconstitutional actions, it was clearly established in the Third Circuit that the government may not take action that "discriminates against religiously motivated conduct" or "proscribes particular conduct only or primarily when religiously motivated" without being narrowly tailored to advance a compelling governmental interest. *Id.* at 165.

102. Defendants' actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, are and were motivated by religious animus toward the Knights of Columbus and/or the Knights of Columbus's religious beliefs.

103. Defendants' actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, violate and violated the required neutrality toward religion mandated by the First Amendment, suppressed the Knights of Columbus's religious exercise, were unconstitutionally under-inclusive, and showed a clear and impermissible hostility toward the sincere religious beliefs and practices motivating the Knights of Columbus.

104. Defendants' actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, were and are based on disagreement with and disapproval of the Knights of Columbus's religion; penalized and discriminated against, and penalize and discriminate against, the Knights of Columbus for its religious beliefs and exercise; and imposed and impose disabilities upon the Knights of Columbus because of its religion.

105. Defendants' actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, are not and were not generally applicable or neutral toward religion, and target and targeted the Knights of Columbus's religion and religious exercise for distinctive and disfavored treatment.

106. Defendants' actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, implicate and implicated not only the Knights of Columbus's free exercise rights alone, but also the Knights of Columbus's free exercise rights in conjunction with other constitutional protections, to include without limitation freedom of speech and equal protection.

107. As a direct and proximate result of Defendants' actions, the Knights of Columbus has suffered and will suffer irreparable harm, including the loss of its constitutional rights, entitling the Knights of Columbus to declaratory, injunctive, and monetary relief.

**Count III – Violation of the United States Constitution
Discrimination on the Basis of Religion in Violation of the Equal Protection Clause**

108. The Knights of Columbus realleges and incorporates by reference the allegations contained in all of the preceding paragraphs as though set forth fully herein.

109. Title 42 U.S.C. § 1983 provides a right of action to redress federal constitutional violations caused by officials acting under color of state law.

110. The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. Where the government engages in “intentional discrimination based on religious affiliation,”

its action “must survive heightened equal-protection review.” *Hassan v. City of New York*, 804 F.3d 277, 301 (3d Cir. 2015), *as amended* (Feb. 2, 2016).

111. The City’s policy of prohibiting individuals and organizations from displaying religious holiday messages on public property—both facially and as applied—constitutes discrimination on the basis of religion in violation of the Equal Protection Clause of the Fourteenth Amendment.

112. By prohibiting individuals and organizations from displaying religious holiday messages on City property, while simultaneously allowing similarly situated individuals and organizations to display secular holiday messages, the City’s policy facially discriminates against religious persons and organizations in violation of the Equal Protection Clause.

113. Religion is an inherently suspect classification. *See id.* at 299.

114. The Knights of Columbus is a religious Catholic fraternal service entity.

115. As applied, Defendants’ decision to prohibit the Knights of Columbus from displaying a crèche at the Bandstand Circle, while simultaneously allowing the Chamber to display a Santa’s House on the boardwalk, constitutes impermissible and intentional discrimination against the Knights of Columbus because of its religion in violation of the Equal Protection Clause.

116. Defendants’ actions, policies, practices, and/or customs, on their face and as applied to the Knights of Columbus, infringe and infringed upon the Knights of Columbus’s fundamental rights to freedom of religion and freedom of speech, among other fundamental rights.

117. Defendants intentionally and unlawfully targeted and target the Knights of Columbus and treated and treats it unequally with other similarly situated religious and non-religious assemblies and institutions on the basis of the Knights of Columbus’s religious status, faith, beliefs, speech, viewpoint, expression, association, exercise, and/or practices.

118. The City’s policy of prohibiting religious messages on public property furthers no compelling governmental interest and is not narrowly tailored or the least restrictive means to advance any compelling governmental interest.

119. At the time of Defendants' unconstitutional actions, it was clearly established in the Third Circuit that the government may not engage in "intentional discrimination based on religious affiliation" without surviving "heightened equal-protection review." *Id.* at 301.

120. As a direct result of Defendants' actions, the Knights of Columbus has suffered and will suffer irreparable harm, including the loss of its constitutional rights, entitling the Knights of Columbus to declaratory, injunctive, and monetary relief.

PRAYER FOR RELIEF

Wherefore, the Knights of Columbus prays for the following relief:

1. A declaration, order, and judgment holding unlawful, enjoining, and setting aside the City's policy of prohibiting religious holiday displays on City property as unconstitutional under the First and Fourteenth Amendments;

2. A declaration, order, and judgment holding unlawful Defendants' actions and decisions to prohibit the Knights of Columbus from displaying a crèche on City property during the 2018 and 2019 holiday seasons;

3. A permanent injunction (1) preventing Defendants from enforcing the prohibition against religious holiday displays to reject the Knights of Columbus's request to display a crèche on City property during future holiday seasons; and (2) requiring Defendants to provide the Knights of Columbus the same benefits and opportunities to display a crèche at the Bandstand Circle during future holiday seasons as Defendants provide for any other display by any other private person, group, organization, and/or entity;

4. Nominal damages, and monetary damages in an amount to be determined at trial;

5. An award of all costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable statute or authority;

6. Any other relief that this Court deems just and proper.

7. The Knights of Columbus requests trial by jury.

June 23, 2020

Respectfully submitted,

/s/ Michael P. Morton

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