

September 17, 2025

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**Re: Unconstitutional Ban on Religious Activity at the Downtown Green
in Morristown, Tennessee**

Dear Mayor Chesney, Ms. Carroll, and Mr. Ellard:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. Brad Tumey contacted us about Morristown's ban on a prayer vigil intended to mourn the recent assassination of Charlie Kirk.

On Wednesday, September 10, 2025, Charlie Kirk was assassinated while speaking before a large crowd at Utah Valley University. The news and impact of Kirk's assassination has reverberated across the globe. Kirk's death has been a monumental source of grief and despair for those of the Christian faith given his killer—and those who have publicly championed his murder—targeted Kirk for his religious beliefs. It is unsurprising, then, that an inestimable number of people across the country, including our nation's leaders, have devoted time, resources, and energy to cobble together vigils and memorials in public spaces to unify themselves against political violence, pray for the Kirk family, and petition God to protect our nation.

But when Tumey and other grieving citizens of Morristown, Tennessee asked for access to downtown public green space to hold a candlelit prayer vigil—where concerts, car shows, family reunions, and other public gatherings are freely permitted—the City said a prayer vigil is not allowed.

On Saturday, September 13, 2025, a member of the Living in Morristown Facebook group proposed holding a prayer vigil for Kirk at the downtown green space, located at 130 W. Morris Blvd., Morristown, TN 37813. The Director of Downtown Development for the local Chamber of Commerce, Natasha Morrison, remarked that events held on the downtown green require a pre-approved permit from the City and that religious activities in particular are disallowed. Tumey, a Christian, thought the vigil was a wonderful idea and wanted to

organize the event. Morrison's comments gave him reason for pause, but he had a hard time believing the City would censor religious activity and speech.

His fears were soon confirmed. The following Monday, September 15, Tumey called the City to inquire about the use of the downtown green for the prayer vigil. He was told by a representative that a permit to use the downtown green for a prayer vigil was needed and would not be approved per City ordinance § 9-204, entitled "Prohibited uses at the farmers market and downtown green" ("Ordinance"). Referring to the downtown green, subsection 6 of the Ordinance states: "**No one shall engage in solicitation, collection drives and/or distribution, *political or religious activities on the premises.***" (emphasis added). Tumey also discovered the permit application for the use of the downtown green online, which reiterates the categorical ban on political and religious activity.

Despite this information, Tumey submitted an application on Wednesday, September 17th, to conduct a prayer vigil at the downtown green this Friday, September 19, hoping the City will follow constitutional law instead of the Ordinance in rendering its decision. This application remains pending as of the date and time of this letter.

The Bible instructs Christians like Tumey to devote themselves to corporate prayer, especially in times of sorrow, anxiousness, and conflict. For Tumey, corporate prayer is not merely a public recitation or meditation; it is efficacious. He and other Christians in the City of Morristown are greatly aggrieved and troubled by the assassination of Charlie Kirk and its implications. Consequently, he wishes to organize and participate in a prayer vigil at the City's downtown green on Friday, September 19, 2025. He sends this letter, through counsel, hoping to secure this relief without resorting to litigation.

LEGAL ANALYSIS

The First Amendment to the U.S. Constitution provides, "Congress shall make no law respecting an establishing of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." These clauses "work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022). The double protection afforded religious speech is by design—"a natural outgrowth of the framers' distrust of government attempts to regulate religion and suppress dissent." *Id.* at 524 (citing A Memorial and Remonstrance Against Religious Assessments, in *Selected Writings of James Madison* 12, 25 (R. Ketchum ed. 2006)). Tumey's desire to organize and engage in a prayer vigil falls squarely under the protection of both clauses. Thus, the City's blanket ban on religious activity abridges both his (I) freedom of speech and (II) the free exercise of his religion.

I. Ban on Prayer Vigil Violates Tumey's Free Speech Rights

The City's categorical ban on all religious expression is an unconstitutional restriction on Tumey's right to freedom of speech.

Speech on religious topics receives full constitutional shielding. *Capital Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995). The degree to which speech can be restricted depends on the nature of the property where the speaker wishes to speak, *Frisby v. Schultz*, 487 U.S. 474, 479 (1988) (citation omitted). Tumey wishes to engage in prayer with others in the community at the downtown green, a public space operated and maintained by the City and its designees. Public parks are "quintessential" public fora speech. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983); *see also Hague v. CIO*, 307 U.S. 496, 515 (1939) (stating that parks "have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions."). That the City limits use to events and requires a permit does not alter the green space's entrenched status as a traditional public forum. The government "may not by its own *ipse dixit* destroy the 'public forum' status of streets and parks which have historically been public forums..." *United States v. Grace*, 461 U.S. 171, 180 (1983).

And this traditional status is significant. Restrictions on speech in such fora are subject to exacting scrutiny, rendering the government's power to limit speech there "very limited." *McCullen v. Coakley*, 573 U.S. 464, 477 (2014). In such forum, speech restrictions can only survive if they are content-neutral, narrowly tailored to serve a significant government interest and leave open ample means of alternate communication. *Perry*, 460 U.S. at 45. The ban on Tumey's religious speech plainly fails this test.

First, "[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). Here, the City's blanket bar against all religious activity is a content-based measure. The City welcomes the public to reserve the downtown green for both public and private events, such as car shows, concerts, corporate meetings, or even family gatherings. Yet, any religious activity is outright banned. Though a local business could gather with its employees to engage in team-building exercises, a local church leadership team could not. The question at the core of the City's decision to approve or deny a permit is whether religion is involved. It inappropriately and unconstitutionally turns on content.

Second, enforcing a total ban on "religious activities" at the downtown green restricts far more speech than necessary to serve any legitimate interest. The City has no legitimate interest in categorically denying all religious activity, including Tumey's planned prayer vigil, in a downtown park, nor is such a ban narrowly tailored. *See Bays v. City of Fairborn*, 668 F.3d 814, 823 (6th Cir. 2012) (doubting that city had significant interest in enforcing a ban on unauthorized leafletting, oral expression, and display of signs during a festival in a park, and holding the restriction was not narrowly tailored). The categorical prohibition of the Ordinance applies with as much force to an individual who wishes to quietly read scripture on the public green as it does to a group of fifty people—regardless of the nature of their activities. Forcing an individual to obtain a permit for religious expression, let alone a categorical ban on such expression, has been deemed by the Supreme Court as "a dramatic departure from our national heritage and constitutional tradition." *Watchtower Bible and Tract Soc. of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 166 (2002).

Third, the restriction does not leave ample alternatives, as Tumey is prohibited from engaging in any form of religious expression anywhere in the downtown green or the adjacent Farmer's Market pavilion. "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939).

II. Ban on Prayer Vigil Violates Tumey's Right to Free Exercise of Religion

The City's categorical ban on all religious expression is an unconstitutional restriction on Tumey's right to free exercise.

"[T]he government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens. . . . The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 638 (2018) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534 (1993)). "A law can reveal a lack of neutrality by protecting secular activities more than comparable religious ones." *Roberts v. Neace*, 958 F.3d 409, 415 (6th Cir. 2020); see also *Tandon v. Newsom*, 593 U.S. 61, 63 (2021) (stating that California's treatment of some comparable secular activities more favorably than religious activities, and its failure to justify the reach of its measures, was a principle that dictated the outcome of the case: state's COVID policies were unconstitutional restrictions of plaintiffs' free exercise rights). Here, Morristown explicitly targets religious practices—not just in its application, but on its face. All religious activity is excluded from the use of the downtown green when other comparable secular activities or gatherings are permitted. It is precisely because a gathering or event may include a religious activity that strikes it from consideration by the City. Thus, the Ordinance imposes a burden on Tumey's right to free exercise that the First Amendment cannot tolerate.

Additionally, his treatment by the City is a blatant violation of his rights under the Tennessee Religious Freedom Restoration Act (TRFRA). TRFRA prohibits any government entity from "substantially burden[ing] a person's free exercise of religion," except where the government agency demonstrates that the burden (1) essential to further a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest. Tenn. Code Ann. § 4-1-407. The City has no legitimate, much less compelling, interest to justify banishing all religious activity from the downtown green despite permitting other public and private gatherings to occur there—including concerts, family reunions, car shows, dances, and corporate gatherings. Nor can a categorical ban on all religious activity—regardless of the size of the group or the nature of the activity—be the least restrictive means for addressing appropriate concerns.

DEMAND

As shown herein, the City's blanket ban on all religious activity in its downtown green, including Tumey's request to host a public prayer vigil in honor of Charlie Kirk, violates his First Amendment speech and free exercise rights, as well as state law. To resolve this concern, Tumey requires the City approve his permit application or otherwise allow him to organize a public prayer vigil on the downtown green on Friday, September 19, 2025. Given the selected date for this vigil, we respectfully request that you respond to this letter in writing no later than end of business day Thursday, September 18, 2025. If we do not hear from you by this date, we will assume the City intends to continue with its unconstitutional banishment of Tumey's prayer vigil, leaving legal action his sole recourse.

Sincerely yours,



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cc: Brad Tumey
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