



October 14, 2025

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City of Durham
101 City Hall Plaza
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Sent via email and U.S. Mail

Re: GoDurham's Rejection of New Life Christian Center Bus Advertisement

Dear Mr. Perla and Ms. Rehberg:

First Liberty Institute, Steptoe LLP and Brooks Pierce represent New Life Christian Center. We write today in the hopes of reaching a mutually acceptable resolution regarding the recent rejection of our client's advertisements on GoDurham buses. We ask that you please respond, in writing, within 30 days.

New Life Christian Center is a Christian church and 501(c)(3) non-profit dedicated to improving the lives of residents of the City of Durham ("the City" or "Durham") through community engagement with the works of Jesus. New Life Christian Center reaches out to the lost and faithless, strengthens individuals and family units, and creates a space for Christians to better themselves in accordance with their faith. New Life Christian Center does so through several community services to serve its neighbors: New Life Christian Center's child development center cares for the children of the Durham community from birth to 5 years old, and we continue to offer elementary education through the fifth grade at Southpoint Academy. So that the community may learn from and get to know one another, New Life Christian Center also offers classes and fellowship groups, including marriage enrichment classes, teen empowerment, a men's ministry, and a singles' ministry. Information about the church's mission, its daycare and educational services, and

fellowships and ministries can be found on its website, ThePrevailingWord.org, or by calling its phone number.

As part of its mission to serve the Durham community, New Life Christian Center has advertised on city buses since 2007 and has had an annual advertisement deal since 2021. New Life Christian Center bus advertisements merely seek to let the community know that the Church is here to serve. They simply include the Church's name, an image of its two pastors, its website address, and its phone number. The City has run these or similar ads for at least the last five years. However, in August 2025, for the first time, the City rejected its advertisement, notifying New Life Christian Center by telephone that the following advertisement violated City advertising policy:



Despite running this or similar ads for several years, the City denied New Life Christian Center's ad on the grounds that City does not run "religious" ads. The City has not provided as final written determination, as required by its written advertising

policy. We thus seek clarification as to why this simple advertisement violates City policy.

The City's Advertising Policy § IV.B provides that GoDurham will not accept advertising that "[i]s religious in nature, including promoting or opposing religious organizations, beliefs or practices." The City provides no guidance, either to its advertising contractor or to the public, as to when and how this policy applies. This ban on ads that are "religious in nature" raises serious constitutional concerns under the Free Speech and Free Exercise Clause of the First Amendment, as interpreted by controlling Supreme Court law.

A. The City's Advertising Ban on Religious Advertising Violates New Life Christian Center's Free Speech Rights.

The City's advertising policy declares its advertising space as "a non-public forum." To satisfy constitutional standards, however, a restriction on speech in a non-public forum must be both reasonable and viewpoint neutral. *See Minn. Voters All. v. Mansky*, 585 U.S. 1, 21 (2018). The City's religious ad ban, and its application to New Life Christian Center here, fails both standards.

1) The City's Ad Policy Is So Indeterminate as to be Unreasonable.

To satisfy Mansky's "reasonableness" standard, the City "must be able to articulate some sensible basis for distinguishing what may come in from what must stay out" under the religious advertising ban. *Mansky*, 585 U.S. at 16. Applying that standard, the Fourth Circuit has invalidated similarly vague transit advertising bans on "political" ads as unreasonable. *White Coat Waste Proj. v. Greater Richmond Transit Co.*, 35 F. 4th 179, 199-200 (4th Cir. 2022) (invalidating transit authority ban on "political ads"). Other courts applying *Mansky* have found that similar open-ended bans on "religious" advertising fail constitutional scrutiny. *See Young Isr. of Tampa, Inc. v. Hillsborough Area Reg'l Transit Auth.*, 89 F.4th 1337, 1344 (11th Cir. 2024).

The City's advertising policy fails *Mansky's* reasonableness standard. It does not to answer such simple questions as "what is an advertising of a 'religious nature'?" *See Young Isr.*, 89 F.4th at 1347 ("unadorned and unexplained" ban on "religious" advertising found unconstitutional under *Mansky*). Lacking any guidance for what sort of ads fall within the policy's broad, indeterminate ban, New Life Christian Center is left to guess why its advertisement was rejected. Is it the mere fact that a Church seeks to advertise its existence and promote its community programs that implicates the policy's ban? Is the mere *name* of the Church that concerns the City's censors? Did the City rely on the content of the Church's website in making its determination? The City provided no explanation of the basis for its decision.

The City's own inconsistent action with respect to the same advertisement by New Life Christian Center—allowing its ads to run for at least five years before rejecting them—suggests that the City's own decisionmakers do not know how to apply the ban. Like the religious advertising ban found unconstitutional in *Young Israel*, the City's policy here “fails to define key terms, lacks any official guidance, and vests too much discretion in those charged with its application.” *Young Isr.*, 89 F.4th at 1347; *see also Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992) (“The First Amendment prohibits the vesting of such unbridled discretion in a government official.”). That the City itself does not know how to apply and articulate its own ban—let alone tell the advertising public what sort of ads are expressly permitted under its policy—demonstrates that the Transit Advertising Policy is unreasonable.

The reasonableness test also requires a reasonable fit between the City's objectives and the regulation on speech. *See Mankys*, 585 U.S. at 16-17. Here, the City simply assumes, without any basis, that a ban on religious speech is needed to “[m]aintain a secure and orderly operating environment” and to “maintain a safe and welcoming environment for all City of Durham employees and customers.” But targeting religious speech simply because some may find it objectionable gives an unreasonable “heckler's veto” to those who might disagree. *See Kennedy v. Bremerton Sch. Dist.* 597 U.S. 507, 543 n.8 (2022) (“Nor under our Constitution does protected speech or religious exercise readily give way to a ‘heckler's veto.’”). A ban on religious speech does not reasonably serve the City's interest in maximizing revenue and maintaining rider safety and comfort. *See City of Durham Transit Advertising Policy* § III. It cannot be applied to New Life Christian Center's advertisements for these reasons.

2) The Religious Advertisement Ban Is Viewpoint Discriminatory.

Putting aside its lack of clarity, the City's Transit Advertising Policy effectively excludes all religious speakers and viewpoints from advertisement on the exterior of the City's buses. The City's Transit Advertising Policy expressly permits non-profit organizations to advertise on City buses on a wide variety of subjects, including health and safety, “personal well-being,” education and training, children's and family services, and charitable contribution campaigns but prohibits any religious viewpoint on these same issues. *See City of Durham Transit Advertising Policy* § IV.A.3. As a nonprofit corporation, New Life Christian Center should be able to advertise its views on similar subjects—like its child-care program and its religious approach to personal well-being—but it cannot because to do so ostensibly amounts to promotion of a religious organization under the Advertising Policy. The Advertising Policy thus effectuates blatant viewpoint discrimination against our

client's religious viewpoint. It is per se unconstitutional. See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829-31 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1993); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109-112 (2001). So long as the City allows transit advertisements directing residents to information about health and safety, "personal well-being," education and training, children's and family services, and charitable contribution campaigns, it must allow the New Life Christian Center's viewpoints on those subjects as well. See *Rosenberger*, 515 U.S. at 831.

That is precisely what New Life Christian Center seeks to advertise. Its incorporated website makes its self-improvement goals clear: "The New Life Christian Center is changing the lives of people by teaching of the Word of God. We meet the needs of the whole man and help strengthen individuals in their walk with Christ. We are a changing church, living in a changing world, serving an unchanging God. Come join us!" The website also highlights its educational programs and invites people to donate in support. That any other non-profit can run a similar self- or community-improvement, educational and charitable messages from a secular standpoint confirms the religious viewpoint discrimination of the Advertising Policy. Courts have struck down similar religious advertising bans for just that reason. See *Ne. Pa. Freethought Soc'y v. Cnty. of Lackawana Transit Sys.*, 938 F.3d 424, 434-35 (3d Cir. 2019).

B. The City's Ban on Religious Advertisement Is Impermissible Under the Free Exercise Clause

The religious advertising ban also runs afoul of the Free Exercise Clause. The City's Advertising Policy does not have "neutral and generally applicable rule[s]." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). "A law [] lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton v. City of Philadelphia, Pa.*, 593 U.S. 522, 534 (2021). The unequal application of the City's Transit Advertising Policy makes it clear that it is not generally applicable. As described above, the City's Transit Advertising Policy permits similar secular grief counseling and community outreach services to advertise. New Life Christian Center, in contrast, has been banned from unobtrusively offering itself as a place of refuge, hope, and guidance for anyone in similar circumstances who might want to pick up the phone. The First Amendment requires that the City must likewise permit New Life Christian Center to advertise its religiously motivated willingness and availability to accompany the grieving, the hopeless, and the poor.

"Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature," but where a law is not generally applicable, courts need not even reach whether it is neutral in

order to decide that the law is unconstitutional under the Free Exercise clause. *Id.* at 533. Because the City's advertisement ban is not generally applicable, the City's advertisement policy is subject to strict scrutiny, the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 509 (1997). To survive strict scrutiny, the advertisement ban must advance "interests of the highest order" and be "narrowly tailored to achieve those interests." *Fulton*, 593 U.S. at 541. Here, the City does not have a compelling interest in excluding ads from New Life Christian Center after previously allowing such ads for several years without incident. The City's actions would therefore likely be found to violate the Free Exercise clause.

New Life Christian is a proud part of the community of the City of Durham, loves serving the Durham community, and has been proud to include its advertisements on the City buses for the past 18 years. With the denial of an advertisement that merely includes the New Life Christian Center's name, website, phone numbers, and lead pastors, the City conveys to its members that "they are outsiders, not full members of the [] community." *Cath. Charities Bureau, Inc. v. Wisc. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025). Given the important role that New Life Christian Center plays in the Durham community, the City's actions are not only constitutionally invalid, but they are also harmful to the New Life Christian Center and the broader community that it serves.

New Life Christian Center is hopeful that the current confusion is due to the engagement of a new ad vendor and that we can amicably work together to keep its advertisements running on Durham's buses. Should we be unable to work out an accommodation, New Life Christian Center is prepared to take all more aggressive steps to preserve its rights, including litigation. But we would like to avoid such costly, time-consuming, and unnecessary litigation.

We ask that the City reconsider its denial of New Life Christian Center's ads in light of the legal issues discussed herein. We kindly request your response, in writing, within 30 days, clarifying the City's official position regarding the City's denial of New Life Christian Center's advertisements. I can be reached at 469-440-7585. My co-counsel, Kearns Davis, can be reached at 336-271-3174.

Marc Perla
Kimberly Rehberg, Esq.
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Respectfully,



Jeremy Dys



Kearns Davis

cc: Adspasure

