



July 15, 2010

Pamela Talkin, Marshal One First Street NE Washington, D.C 20543	Scott Harris, Supreme Court Counsel <b><u>Via E-mail: <a href="mailto:scott.harris@usdoj.gov">scott.harris@usdoj.gov</a></u></b> <b><u>and U.S. Mail</u></b> One First Street NE Washington, D.C 20543
Kathleen Arberg, Public Information Officer <b><u>Via E-mail: <a href="mailto:pio@supremecourt.gov">pio@supremecourt.gov</a></u></b> <b><u>and U.S. Mail</u></b> Supreme Court of the United States Washington, DC 20543	

Re: Violation of Free Speech, Free Exercise, Equal Protection, and Due Process on Supreme Court Grounds

Dear Ms. Talkin, Mr. Harris, and Ms. Arberg:

Maureen Rigo contacted the Alliance Defense Fund (ADF) regarding her desire to pray with her students and a few adults, on Supreme Court grounds. On May 5, 2010, Mrs. Rigo, a teacher at Wickenburg Christian Academy, was taking an educational tour of the Supreme Court with her group. Once they arrived in the Oval Plaza, Mrs. Rigo and others stood off toward the side, at the bottom level of the steps, bowed their heads, and began praying together quietly.

Mrs. Rigo and the students were not praying loudly so as to be heard. They were praying in a conversational level to each other (and to God). They were not attempting to attract attention to themselves. They were not engaging in a demonstration or a vigil of any sort or attempting to protest anything. In fact, they were not attempting to communicate a message to anyone outside of their small group. They were communicating to each other and to God via their prayers. And during this time, they stood out of the way and did not block anyone or create any type of disturbance or spectacle.

And yet, a Supreme Court police officer abruptly stopped the prayer and told Mrs. Rigo and her group that they could not pray in that public area. They could not pray in that location because a federal statute, 40 U.S.C. §6135, prohibited it.

## LEGAL ANALYSIS

Courts use a process called forum analysis to evaluate restrictions against expression on public property. *Cornelius vs. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U. S. 788, 797 (1995). This process contains three steps: A) assess whether the expressive activity deserves protection, B) determine the nature of the forum, and C) apply the appropriate level of scrutiny to the restriction. *Id.* Here, the application of 40 U.S.C. §6135 to prevent quiet, conversational-level prayers (like Rigo's) is unconstitutional because it is unreasonable, overbroad, and viewpoint discriminatory. 40 U.S.C. §6135 reads as follows:

It is unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement.

The wording of the statute does not seemingly contemplate quiet prayers like Mrs. Rigo's. Such prayers are "not designed or adopted to bring" Mrs. Rigo "into public notice." Indeed, Mrs. Rigo's prayers were not communicated to anyone outside of God and her very small group. Her prayers are akin to routine conversations conducted by any other small group of persons touring the Supreme Court grounds. Likewise, Mrs. Rigo was not engaging in a parade, procession, or assembly. She was speaking in a conversational level to those around her with her head bowed.

There is no reason to silence Mrs. Rigo's activities since these activities do not attract attention, create a crowd, or give off the appearance of partiality. The ban on private prayers cannot hope to survive First Amendment scrutiny. *See, e.g., Bd. of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 574-75 (1987) (invalidating ban on all "First Amendment activity" in nonpublic forum LAX airport terminal as overbroad because "it prohibits even talking" and "no conceivable governmental interest would justify such an absolute prohibition of speech.").<sup>1</sup>

The Supreme Court police obviously allow people to converse with each other on Supreme Court grounds without accusing them of violating 40 U.S.C. §6135. For the same reasons that such conversations do not create any concerns, Mrs. Rigo's prayer activities do not create any concerns. Without any reasonable basis to

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<sup>1</sup> By applying a statute to silence Mrs. Rigo that does not appear to apply to Mrs. Rigo's activities, the Supreme Court police have violated also principles of due process. A citizen must have ample warning that a law applies to their actions. *See, e.g., Smith v. Goguen*, 415 U.S. 566, 572-73 (1974) (explaining that "the due process doctrine of vagueness.... incorporates notions of fair notice or warning [and] requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent 'arbitrary and discriminatory enforcement'").

distinguish Mrs. Rigo's prayers from permitted conversation, singling out and silencing the former is unreasonable. *See, e.g., Lederman v. United States*, 291 F.3d 36, 45 (D.C. Cir. 2002) ("Freedom of expression...would rest on a soft foundation indeed if government could distinguish between demonstrators and pedestrians on 'a wholesale and categorical basis,' without providing evidence that demonstrators pose a greater risk to identified government interests than do pedestrians.") (citation omitted).

The only logical explanation for prohibiting Mrs. Rigo's activities, while allowing other conversations, pertains to the viewpoint of Mrs. Rigo's expression. Evidently, people may engage in all sorts of conversational expression on Supreme Court grounds unless that expression happens to involve prayer. In so doing, the Supreme Court police have not targeted a subject matter or class of expression, but targeted a particular viewpoint for censorship. They have singled out and censored religious prayer as the only form of conversation to be silenced. This exemplifies viewpoint discrimination, where "the government targets not subject matter, but particular views taken by speakers." *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995). And this discrimination violates the First Amendment. *Id.* *See also Tucker v. State of California Dep't of Educ.*, 97 F.3d 1204, 1214 (9th Cir. 1996) (invalidating ban on religious advocacy in workplace because the "prohibition is unreasonable not only because it bans a vast amount of material without legitimate justification but also because its sole target is religious speech.").<sup>2</sup>

### DEMAND

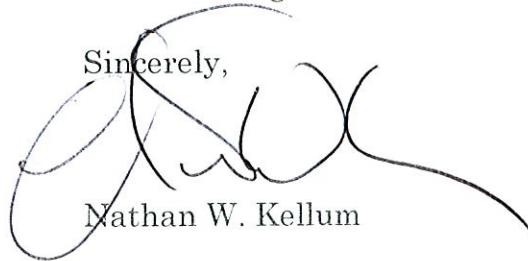
We hope this information helps clarify the rights of those who wish to engage in quiet prayers in public places and the responsibilities of the Supreme Court police in addressing these individuals. In summary, the First Amendment does not allow the Supreme Court police to ban quiet prayers conducted on a conversational level on Supreme Court grounds. Because Mrs. Rigo desires to return to the Supreme Court grounds and engage in prayer without fear of punishment, we demand that you notify us in writing, no later than three weeks from the date of this letter, that you will allow Mrs. Rigo to engage in conversational level prayers directed to her nearby companions and God. If we do not hear from you in writing before the specified deadline, we can only assume that the Supreme Court police approve of – and intends to continue – their unconstitutional enforcement of 40

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<sup>2</sup> In allowing all other conversations except for similarly-situated expression about religion, the Supreme Court police also violate the Equal Protection, Free Exercise, and Establishment Clauses.

U.S.C. §6135. Under that scenario, Mrs. Rigo would have no choice but to take legal action to ensure the exercise of her constitutional rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan W. Kellum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nathan W. Kellum

NWK/mk

cc: Maureen Rigo  
Myrrel C. Hendricks Jr., Esq.