

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

	)	
THE PINES CHURCH and MATT	)	
GIOIA	)	
	)	
Plaintiffs	)	
	)	
v.	)	<b>Civil Action No. 1:23-cv-00214-LEW</b>
	)	
HERMON SCHOOL DEPARTMENT	)	
	)	
	)	
Defendant	)	

**HERMON SCHOOL DEPARTMENT’S MOTION FOR SUMMARY JUDGMENT  
WITH INCORPORATED MEMORANDUM OF LAW**

**MOTION**

Defendant the Hermon School Department (“HSD”) moves this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment on all Plaintiffs’ claims pled in the Amended Complaint. The reason for this motion, as set forth more fully below and in the accompanying statement of material facts is that there is no genuine issue of fact and HSD is entitled to judgment on those claims as a matter of law.

**INTRODUCTION**

In this case, Plaintiffs The Pines Church and Matthew Gioia allege that HSD violated the United States Constitution and the Maine Human Rights Act when the Hermon School Committee did not vote to give The Pines Church a lease for use of the theater, cafeteria and two classrooms at the high school every Sunday for a year. Plaintiffs’ claims are based on the erroneous assumption that HSD treated The Pine Church differently than it has treated secular organizations. To the contrary, the undisputed record in this case establishes that in order to preserve its ability to use facilities for its students, HSD never leases its property to outside entities. HSD permits

community groups to use facilities when they are available but in order to preserve flexibility, it does not legally obligate itself to do so under a long-term lease. And here, it is undisputed that HSD did not exclude The Pines Church from its facilities, and indeed, it went above and beyond to respond to the Church's request for a lease by offering it one – albeit a lease that was shorter in length than the Church desired. There is no evidence upon which Plaintiffs can support their claims that they were discriminated against on the basis of their religion and HSD is therefore entitled to summary judgment.

### **STATEMENT OF FACTS**

HSD is a school district located in Hermon, Maine that operates an elementary school, a middle school and a high school. SMF ¶1. HSD permits members of the community to use its facilities pursuant to School Board Policy KG which provides, in relevant part:

School facilities should be made available for appropriate community use when such facilities are not required for their primary purposes: the instruction of students and related school activities.

SMF ¶ 2.

Because of the directive from the School Board that school facilities must be available in the first instance for school activities, HSD does not bind itself to make its facilities available through leases. SMF ¶ 3. Instead, HSD has developed a process whereby community members who wish to use facilities fill out a Facilities Use Request Form specifying what space they want, when they want it and any special requests they may have. SMF ¶ 4. Some groups ask for a single day, others ask for several days in one week or one or more days for several weeks. SMF ¶ 5. Usually requests that are made are granted. SMF ¶ 6. Occasionally the school may be in use on a date and time requested and in those instances the request is denied. *Id.*

HSD makes its facilities available to a broad spectrum of entities ranging from groups running athletic events, to community groups such as the Girl Scouts, to religious groups such as the Good News Club. SMF ¶ 9. Decisions regarding usage of space are not made based on the viewpoint of the applicant. Rather, the sole criteria used is availability of the space. SMF ¶ ¶10, 34.

Plaintiff The Pines Church is a religious organization and Plaintiff Matthew Gioia serves as its pastor. SMF ¶ 11. The Pines Church currently holds its services at the Spotlight Theater in Orono. SMF ¶ 12. The Pines Church does not have a lease with Spotlight Cinema, rather they have a “gentleman’s agreement that the Church can use the theater for church services and meetings.” SMF ¶ 13.

On September 23, 2022, Plaintiff Gioia reached out to the HSD on behalf of The Pines Church to inquire about leasing space at Hermon High School for it to hold its Sunday Services. SMF ¶ 14. Gioia had a big ask: He wanted to rent the school’s theater, its cafeteria and two classrooms every Sunday from 7:00am to 1:00pm for a one-year period.<sup>1</sup> SMF ¶ 15. In making this request, Gioia was acting on behalf of the Church not for himself personally. SMF ¶16.

This was the first time that Superintendent Micah Grant had ever been asked about a lease for school facilities. SMF ¶ 17. Upon receiving the request, he consulted the Board Policy on community use and saw that it mandated a Board vote for the granting of a long-term lease. Therefore, after giving several church members a tour of the space, he directed them to the School Board to make their request. SMF ¶ 19. On November 7, 2022, Gioia presented to the HSD School Board the Church’s “heart in wanting to serve the needs of our community.” SMF ¶ 20.

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<sup>1</sup> Most of the requests that HSD gets are for a single classroom, or the cafeteria, or gymnasium. None have been for as much space as the Church requested, and none have been for the span of a year. *See* Facilities Use Request Forms, Stipulated Record, ECF Doc. 26, PageID ## 512-531.

The next day, Chris McLaughlin, an HSD Board member, reached out to Gioia with some follow up questions that occurred to him after Gioia's presentation. SMF ¶ 21. Gioia responded that he would like the HSD member to "funnel all questions through the Superintendent," so McLaughlin sent an email to the Superintendent asking about The Pines Church's views on same sex marriage, access to abortion, access to gender affirming medical care, conversion therapy, and sexual education for youth. SMF ¶ 22. On November 10, 2022, the Superintendent sent Gioia McLaughlin's follow up questions. SMF ¶ 24. Gioia responded by asking whether HSD asked these questions to everyone who seeks a lease. SMF ¶ 25. The Superintendent responded "no, but no one has ever asked for a year-long lease". *Id.* Gioia never provided the Church's position on any of these issues. SMF ¶ 26.

On December 12, 2022, the HSD School Board met to consider The Pines Church's proposal. HSD School Board member Shorey moved to extend a six-month lease to The Pines Church, but that motion failed for lack of a second by any of the seven members of the School Board. SMF ¶ 27. Then HSD School Board Member Oiler moved to offer the Pines Church a month-to-month lease and that motion passed. SMF ¶ 28. Plaintiffs' religious beliefs were never considered when HSD decided whether or not to offer a long-term lease. SMF ¶ 29.

The offer of a month-to-month lease was rejected by Plaintiffs who claimed, despite the fact that The Pines Church is currently operating with a month-to-month lease in Orono, that a "it would be hard for us to advertise for an Easter service if we didn't know we were going to be there the following month, so – and it take a tremendous amount of effort for us to take all of our equipment, to move it over there, only to find out that, well, you fulfilled this month, it's not available for next month." SMF ¶ 30. In short, the objectives of the two parties were polar opposites: HSD needed flexibility to ensure that its facilities are always available to its students

and The Pines Church needed certainty as to where it would be holding services over a substantial period of time. Therefore, The Pines Church was unwilling to accept HSD's offer to let it use the space on a month-to-month basis as availability allowed so the Church has remained at the Spotlight Theater where it likewise has no lease.

## **ARGUMENT**

### **I. The Applicable Legal Standard.**

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Redmond v. Yachting Sols., LLC*, 435 F. Supp. 3d 257, 260 (D. Me. 2019) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)); *Caudill v. Kennebec Cnty.*, No. 1:18-CV-00164-GZS, 2019 WL 1270921, at \*2 (D. Me. Mar. 19, 2019). For summary judgment purposes, “genuine” means that “a reasonable jury could resolve the point in favor of the nonmoving party,” and a “material fact” is one whose “existence or nonexistence has the potential to change the outcome of the case.” *Tropigas de Puerto Rico, Inc. v. Certain Underwriters at Lloyd's of London*, 637 F.3d 53, 56 (1st Cir.2011) (citations omitted). Once the moving party has made this preliminary showing, the nonmoving party must “produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue.” *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir.1999); *see also* Fed. R. Civ. P. 56(e).

Although the Court “view[s] the evidence in the light most favorable to the nonmovant, ‘as to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue

warrants summary judgment to the moving party.” *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation omitted).

**II. HSD is Entitled to Summary Judgment on all Claims Pled in the Complaint Because There is No Evidence in The Record That Plaintiffs Were Discriminated Against Based On Their Religion.**

A. The Elements of Plaintiffs’ Claims

Plaintiffs have pled four separate claims against HSD, the elements of which are as follows.

1. The Free Exercise Claim (Count I): “The Free Exercise Claims provides that “Congress shall make no law ... prohibiting the free exercise” of religion.” *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. \_\_\_,141 S. Ct. 1868, 1876 (2021). It “protects religious observers against unequal treatment” and against “laws that impose special disabilities on the basis of religious status.” *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. \_\_\_, 140 S. Ct. 2246, 2249 (2020) (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 461 (2017)). Under the Free Exercise Clause, the government may not “(1) compel affirmation of religious beliefs; (2) punish the expression of religious doctrines it believes to be false; (3) impose special disabilities on the basis of religious views or religious status; or (4) lend its power to one side or the other in controversies over religious authorities or dogma.” *Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 14 (1st Cir. 2010) (citing *Parker v. Hurley*, 514 F.3d 87, 103 (1st Cir.2008)). The protections of the Free Exercise Clause are applicable if the governmental actions at issue discriminate “against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520, 532 (1993).

2. The Maine Human Rights Act Claim (Count II): The Maine Human Rights Act provides, in relevant part, that “[t]he opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right.” 5 M.R.S. § 4591. “Section 4592(1) establishes three prerequisites in order to find unlawful public accommodations discrimination: (1) the party charged is the owner, lessee, proprietor, manager, superintendent, agent or employee of a place of public accommodation who (2) refuses or withholds to any person, on account of race or color, sex, physical or mental disability, religion, ancestry or national origin, (3) any of the accommodations, advantages, facilities or privileges of public accommodation.” *Maine Hum. Rts. Comm’n v. Le Club Calumet*, 609 A.2d 285, 286 (Me. 1992).

3. The Free Speech Claim (Count III): The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of people to peaceably assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I. “[P]rotected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.” *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 799-800 (1985). “The essence of a viewpoint discrimination claim is that the government has preferred the message of one speaker over another.” *McGuire v. Reilly*, 386 F.3d 45, 62 (1st Cir. 2004). The government must therefore “abstain from regulating speech when the specific

motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995).

4. The Establishment Clause Claim (Count IV): The First Amendment prohibits governments from making any law “respecting an establishment of religion.” U.S. Const. amend. I. The “clearest command” of this provision is that “one religious denomination cannot be officially preferred over another, ... nor can the government prefer religion over nonreligion.” *Calvary Chapel of Bangor v. Mills*, 459 F. Supp. 3d 273, 287 (D. Me. 2020)(citing *Perrier-Bilbo v. United States*, 954 F.3d 413, 422 (1st Cir. 2020)(internal quotations omitted)). The test for a violation of the Establishment clause “may be stated as follows:

what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.

*Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 222 (1963); *see also Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (“government action survives an Establishment Clause challenge if (1) it has a secular legislative purpose, (2) its principal effect does not advance or inhibits religion, and (3) it does not foster an excessive government entanglement with religion.”); *Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 9 (1st Cir. 2010); *Calvary Chapel of Bangor*, 459 F. Supp. 3d at 287.

#### B. The Record in This Case

In order for The Pines Church to succeed on any of its claims in this case, it must show either that: (1) HSD treated it differently from other applicants for a lease based on its religion; or (2) that HSD turned down the Church’s request for a year-long lease because of its religion. There is no evidence in the record in this case upon which it can succeed under either theory.



The Pines Church cannot show that it was treated differently than other applicants for long term leases because it is the only applicant that HSD has had for a long term lease. That is what the Superintendent told Gioia when he asked about the questions McLaughlin posed, and that is what HSD records reflect. SMF ¶¶ 3, 17, 25. The Pines Church has no evidence to the contrary.

Nor is there any competent evidence in the record upon which a reasonable factfinder could rely to find that the reason HSD did not give The Pines Church a long-term lease was its religious views. It is, after all, undisputed that HSD permits other religious organizations to use its space. SMF ¶ 8. And it is also undisputed that HSD never learned what the beliefs were of The Pines Church other than the information that Gioia conveyed during his presentation to the Board. SMF ¶ 26.

Plaintiffs pin their entire case here on the fact that Chris McLaughlin asked Gioia what the Church's views were on abortion, gender affirming care, sexual education and other controversial topics. That single question, Plaintiffs claim, suggests that the HSD School Board's motivation to deny the Church the lease it requested was based on its religious views. In fact, however, McLaughlin's request is irrelevant. In the first place, it is undisputed that Plaintiffs never responded to the request, so it would not have been possible for anyone on the Board to make a decision based on the viewpoint of the Church. Moreover, McLaughlin was only one of seven voting members of the Board and there is no evidence whatsoever to suggest that they based their decision on anything other than their longstanding practice of utilizing just school facilities for school sanctioned events. Finally, and most importantly, the undisputed fact is that the Board voted to give The Pines Church a month-to-month lease. In other words, it did not vote to exclude the Church. It merely followed the spirit of its policy requiring that school space be available for school activities.

Based on the undisputed record, therefore, it would be impossible for a reasonable factfinder to conclude that the decision of the HSD Board to give The Pines Church a month-to-month rather than a year long lease was a violation of the First Amendment or the Maine Human Rights Act.

**III. HSD is Entitled to Summary Judgment on all Claims Asserted by Matthew Gioia.**

Notwithstanding that it is undisputed that Matthew Gioia never asked to rent space on his own behalf, SMF ¶ 16, he has asserted personal claims for religious discrimination in this case. Each of the claims asserted in the complaint require that the plaintiff suffer some sort of adverse action. Here, given the undisputed fact that Gioia was acting on behalf of The Pines Church when sought to rent space at the Hermon High School, he has no viable individual claim against HSD. HSD is entitled to summary judgment on Gioia's individual claim for this independent reason.

**CONCLUSION**

In the end, what this case comes down to is that The Pines Church was looking for more than HSD is willing to give to anyone: a long term lease. The Pines Church wanted to lock in its ability to use space; HSD is not willing to do that. This is not religious discrimination, this is a reasonable decision by the Board as to its priorities for use of space and one that it is undisputed is applied equally to all. HSD is therefore entitled to summary judgment on all counts of Plaintiffs' amended complaint.

Dated: January 22, 2024

/s/ Melissa A. Hewey

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