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**By Email & U.S. Mail**

Daniel L. Brown, City Attorney  
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Re: *Project ROSE Establishment Clause Violations*

Dear Mr. Brown:

The City of Phoenix partners with Bethany Bible Church, Catholic Charities, and other organizations to run Project ROSE, a program that threatens prostitution suspects with criminal prosecution if they decline to enroll in a religious program. Twice a year, the Phoenix Police Department conducts citywide sting operations to arrest those it suspects of prostitution-related offenses, and then takes these suspects to Bethany Bible Church. At the church, suspects are handcuffed and not provided legal counsel; suspects are then informed by lawyers from the Phoenix City Prosecutor's office that they will face criminal prosecution unless they participate in a treatment and education program administered by Catholic Charities.

These practices amount to a flagrant violation of the Establishment Clause of the First Amendment to the United States Constitution. The city is coercing individuals to participate in religious activities and programs, under pain of criminal prosecution. The city is conveying its endorsement of religion generally and Christianity in particular. And the city is using taxpayer money and law-enforcement resources to aid religious institutions. Please immediately end these violations by suspending Project ROSE.

*A. The Operation of Project ROSE*

We understand that Project ROSE operates as follows. Twice a year, the Phoenix Police Department assigns several police officers to conduct a two-day sweep of the city and to arrest individuals suspected of prostitution or related offenses. *See* Memorandum from Phoenix City Prosecutor Aarón J. Carreón-Aínsa to Phoenix City Manager David Cavazos 31 (June 12, 2013) ("City Memo"), *available at*

[http://phoenix.gov/webcms/groups/internet/@inter/@citygov/@publicnotice/document/s/meeting\\_notices/099024.pdf](http://phoenix.gov/webcms/groups/internet/@inter/@citygov/@publicnotice/document/s/meeting_notices/099024.pdf); Sarah Hoyer, *How a Controversial Ariz. Program Tries to Keep Sex Workers Out of Jail*, Al Jazeera America Tonight (Nov. 15, 2013), <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/11/14/project-rose-prostitutesjail.html> (all websites last visited Apr. 3, 2014). Project ROSE is supported by highest levels of the Phoenix Police Department; according to a Phoenix police lieutenant, “It’s unusual for me to go to my boss and say, ‘I need 100 guys for 24 hours,’ [but] I get those resources without question.” J.J. Hensley, *Phoenix Police Fight Prostitution with a Human Approach*, The Arizona Republic, Apr. 24, 2012, available at <http://www.azcentral.com/community/phoenix/articles/2012/04/24/20120424phoenix-police-fight-prostitution-human-approach.html>. Since Project ROSE began in 2011, the city has arrested over 300 people as part of the program. City Memo, *supra*, at 31.

Anyone arrested as part of Project ROSE is sent to “a command post hosted by Pastor Brad Pellish” at Bethany Bible Church. See Joseph Garcia, *ASU, Phoenix Police Team Up to Help Victims of Prostitution*, ASU News (Apr. 26, 2012), [http://asunews.asu.edu/20120426\\_social\\_work](http://asunews.asu.edu/20120426_social_work). Police officers escort the suspects into the church in handcuffs. See Al Jazeera America Tonight, *Sex Work in Phoenix*, at 1:08–1:11, 1:47–1:52, available at <http://vimeo.com/85804433>. Once they enter the church, suspects are told, “If you agree to stay in the program, they will not arrest you on this charge,” and are asked, “Can you agree that you’ll stay?” *Id.* at 0:36–1:01. The suspects are not provided, or otherwise represented by, legal counsel.

Suspects are then instructed to sign forms authorizing Catholic Charities to enroll them in the city’s Prostitution Diversion Program. *Id.* at 1:23–1:35. An area of Bethany Bible Church is marked by a sign that displays a Latin cross, the church’s name, a Project ROSE logo, and the words “Prosecutor’s Office.” *Id.* at 7:15–7:17. There, the suspects meet, one at a time, with a City of Phoenix prosecutor who regularly staffs Project ROSE events. *Id.* at 1:36–1:57, 6:45–8:14. The prosecutor informs suspects that they must complete the Catholic Charities diversion program if they wish to keep their arrest off the books; to a woman who declined to participate in the program, he said, “I gotta warn you that sometime down the road, you’ll get a summons and complaint.” *Id.* If suspects complete the diversion program run by Catholic Charities, “the police report is not submitted to the Prosecutor’s Office for charging,” but if they are “non-compliant, the police report is submitted to the Prosecutor’s Office and charged.” City Memo, *supra*, at 31. Under Phoenix law, anyone convicted of offering, soliciting, or “manifest[ing] an intent to commit or solicit an act of prostitution” is subject to a mandatory sentence of fifteen days to six months imprisonment and may also be fined up to \$2,500. Phoenix, Ariz. Code § 23-52.

Catholic Charities counselors are present at Bethany Bible Church to conduct suspects’ intake into the diversion program, and Catholic Charities “has been the

agency contracted [by the City of Phoenix] to provide this program since inception.” City Memo, *supra*, at 29, 31. The mission of Catholic Charities is “founded in Scripture”; the organization “operates within the principles of its faith tradition,” and it “do[es] not provide services that are contrary to the teachings of the Catholic Church.” *About Us*, Catholic Charities Community Services Arizona, <https://www.catholiccharitiesaz.org/about-us/00002i>. A prior participant in the program reports that its classes have “the religious overtones of an Alcoholics Anonymous meeting.” Molly Crabapple, *Project ROSE Is Arresting Sex Workers in Arizona to Save Their Souls*, *Vice* (Feb. 26, 2014), [http://www.vice.com/en\\_ca/read/in-arizona-project-rose-is-arresting-sex-workers-to-save-them](http://www.vice.com/en_ca/read/in-arizona-project-rose-is-arresting-sex-workers-to-save-them).

In sum, the city arrests hundreds of individuals and takes them to a Christian church. The city then informs the suspects, who are not represented by counsel, that they must immediately agree to enroll in a program administered by a Catholic agency, and that they will be criminally prosecuted if they do not complete this religious program.

#### *B. Project ROSE’s Constitutional Violations*

The city’s operation of Project ROSE violates the Establishment Clause in three independent ways: (1) the city coerces suspects to participate in a religious program, (2) the city endorses religion, and (3) the city finances religious activity.

First, by transporting arrestees to a church and criminally prosecuting those who do not complete the Catholic Charities diversion program, the city coerces suspects to participate in religious programs. As the Supreme Court explained in *Lee v. Weisman*, 505 U.S. 577 (1992), “[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Id.* at 587. Courts, including the Ninth Circuit—which has jurisdiction over cases arising from Arizona—have consistently barred the government from pressuring criminal offenders to participate in rehabilitation programs containing religious content. *See, e.g., Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007) (“[R]equiring a parolee to attend religion-based treatment programs violates the First Amendment.”); *Bobko v. Lavan*, 157 F. App’x 516, 518 (3d Cir. 2005) (“The government violates the First Amendment’s Establishment Clause when it requires a prisoner to participate in a drug or alcohol rehabilitation program with a religious component.”); *Warner v. Orange Cnty. Dep’t of Probation*, 115 F.3d 1068, 1074–77 (2d Cir. 1997) (county violated Establishment Clause where its “policy, its recommendation, and its printed form all directly recommended A.A. therapy to the sentencing judge”), *reinstated in full after vacatur and remand*, 173 F.3d 120 (2d Cir. 1999); *Kerr v. Farrey*, 95 F.3d 472, 473–74 (7th Cir. 1996) (state correctional facility may not “require an inmate, upon pain of being rated a higher security risk and suffering adverse effects for parole eligibility, to attend a substance abuse counseling program with explicit religious content”). This is not a remotely close question: it is “uncommonly well-settled” that coercing

participation in religious programs “strikes at the core of the Establishment Clause of the First Amendment.” *Inouye*, 504 F.3d at 712, 716.

The coercion present in Project ROSE is especially serious. Those convicted of a crime have at least received due process protections, including representation by legal counsel, pursuant to proceedings overseen by a neutral judge. Suspects receive no such protections under Project ROSE. Instead, they are brought by police to a Christian church, and immediately told that they must enroll in a program with religious components to escape criminal charges. Even if Project ROSE arrestees were represented by counsel, the unlawful coercion would persist: the choice “to be imprisoned or renounce [one’s] own religious beliefs ... offends the core of Establishment Clause jurisprudence.” *Inouye*, 504 F.3d at 712, 714. The choice between criminal prosecution and religious participation is no choice at all.

Second, Project ROSE violates the Establishment Clause by conveying the City of Phoenix’s endorsement of religion in general and Christianity in particular. The Establishment Clause prohibits governmental entities from taking any action that “has the purpose or effect of ‘endorsing’ religion.” *Cnty. of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573, 592 (1989). Here, the city brings suspects to a church; identifies Project ROSE and the “Prosecutor’s Office” with signs bearing Latin crosses; and declines to prosecute only those who enroll in a religious diversion program run by a Christian organization. *See Crabapple, supra; Sex Work in Phoenix, supra*, at 0:35, 0:56, 1:23–1:37. Each of these actions conveys the message that religion generally and Christianity in particular is the city’s preferred remedy for those charged with prostitution—so much so that the City suspends its normal process of arrest and prosecution.

Finally, through Project ROSE, the City of Phoenix impermissibly funds religious activity. Under the Establishment Clause, government entities may not use public funds to finance religious activities or messages. *See Mitchell v. Helms*, 530 U.S. 793, 840–41 (2000) (controlling concurrence of O’Connor, J.). Arizona’s state constitution likewise bars government spending on religious programs: “No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.” Ariz. Const. art. II, § 12.

Yet the city devotes significant public resources to Project ROSE. The city assigns numerous police officers to investigate and arrest hundreds of suspects in order to transport them to Bethany Bible Church and enroll them in the Catholic Charities diversion program. *See City Memo, supra*, at 31; Hensley, *supra*. The Phoenix City Council also approves direct expenditures to fund the diversion program, which Catholic Charities has provided through a contract with the city since the program began. *See City Memo, supra*, at 29. In 2011, for example, the City Prosecutor requested that City Council approve a disbursement of \$299,009 to fund the diversion program for the second fiscal year of the city’s contract with

Catholic Charities. Memorandum from Phoenix City Prosecutor Aarón J. Carreón-Aínsa to Phoenix City Manager David Cavazos 11 (Apr. 26, 2011), *available at* [http://phoenix.gov/webcms/groups/internet/@inter/@newsrel/documents/web\\_content/057931~1.pdf](http://phoenix.gov/webcms/groups/internet/@inter/@newsrel/documents/web_content/057931~1.pdf). Project ROSE also receives funding and resources from the Phoenix Police Department. Describing Project ROSE, a Phoenix police lieutenant explained, “It’s unusual for me to go to my boss and say, ‘I need 100 guys for 24 hours,’ [but] I get those resources without question.” Hensley, *supra*.

Courts have prohibited governments from funding or sponsoring religious institutions and activities in a range of contexts and circumstances. *See, e.g., Doe v. Vill. of Crestwood*, 917 F.2d 1476, 1478–79 (7th Cir. 1990) (local government may not fund festival that includes Catholic Mass, because “[a] religious service under governmental auspices necessarily conveys the message of approval or endorsement”); *Gilfillan v. City of Philadelphia*, 637 F.2d 924, 934 (3d Cir. 1980) (city may not pay for construction of platform for use during visit by Pope); *Newman v. City of E. Point*, 181 F. Supp. 2d 1374, 1381–82 (N.D. Ga. 2002) (even though event was privately sponsored, Establishment Clause prohibited use of “City funds to produce, duplicate and distribute a flyer advertising the Mayor’s Prayer Breakfast”). The city’s funding and staffing of Project ROSE—a project designed to induce suspects to attend a religious diversion program—is a clear violation of these restrictions.

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Project ROSE unlawfully uses the power of the criminal justice system to pressure vulnerable suspects to attend religious programs. Please suspend Project ROSE immediately.

We would appreciate a response to this letter within thirty days. If you have any questions, you may contact Zachary Dietert at (202) 466-3234 or [dietert@au.org](mailto:dietert@au.org).

Sincerely,



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