

July 24, 2026

Via email



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Re: Remembrance in Light Ceremony

Dear Solicitor Carlton:

We are writing on behalf of 9-11 Memorial Garden of Reflection, Inc. regarding Lower Makefield Township's (the "Township") decision to deny it permission to hold a Remembrance in Light ceremony on the evening of September 11, 2026. Our understanding is that the Township initially rejected this request because the first night of Rosh Hashanah begins at sundown on September 11, 2026, claiming that it would be disrespectful to allow a Township resident to hold a memorial service on Rosh Hashanah. Subsequently, and undercutting its initial rationale, the Township now claims that the Remembrance in Light ceremony will conflict with a similar Township event scheduled for the early evening of September 11, 2026. The Township's actions violate 9-11 Memorial Garden of Reflection, Inc.'s First Amendment rights. We are writing to request that the Township meet with us and board members from 9-11 Memorial Garden of Reflection, Inc. to resolve this dispute amicably.

As you likely know, the Garden of Reflection (the "Garden") was built on land dedicated by the Township for the express purpose of building a memorial to the victims of the September 11, 2001, terrorist attacks. The Garden is open to the public from dawn to dusk (sometimes later), and memorial services are held in the Garden each year on September 11. These services typically take place in the morning. Every five years, however, an evening ceremony, the Remembrance in Light, is organized by the victims' family members, including members of 9-11 Memorial Garden of Reflection, Inc. Many family members find morning ceremonies triggering due to the marking of certain events. As a result, some family members only attend evening ceremonies. Other family members prefer an evening ceremony so they can visit impact

sites in the morning, while others prefer evening ceremonies so they can avoid conflicts with school and work. Some victims' family members even plan international travel around the Remembrance in Light ceremony. Regardless of individual reasons, the Remembrance in Light ceremony has become a meaningful and essential part of some community members' lives. Recognizing this, the Township agreed years ago that "nighttime 'Remembrance in Light' ceremonies will be held on every 5th anniversary." 9/11 Remembrance Ceremony, Lower Makefield Twp. Calendar (accessed Jul. 21, 2026), <https://www.lmt.org/resources/calendar/event-details/?id=8085>.

Despite the tradition, and promise, of holding a Remembrance in Light ceremony every five years, on March 17, 2026, the Township denied a permit for the ceremony. The stated reason for the denial was that it conflicts with Rosh Hashanah, which begins at sundown on September 11, 2026. When denying the permit, the Township Manager explained that the Township has an obligation to "be mindful of [Rosh Hashanah] and its significance to members of our community when scheduling events in Township facilities." As a result of this, the individuals planning the Remembrance in Light ceremony attended a Board of Supervisors meeting on March 18, 2026, to ask that the permit denial be reconsidered. The Board of Supervisors directed the concerned community members to the Township's 9/11 Remembrance Committee.

The 9/11 25th Remembrance Committee met for the first time on March 31, 2026. At the meeting, one of the committee members, who is also a member of the Board of Supervisors, stated that the Township would hold an evening ceremony on September 10, 2026, and a morning ceremony on September 11, 2026. Numerous members of the committee, including Ellen Saracini, opposed this plan. Following this meeting, on April 6, 2026, Ms. Saracini applied for a permit on behalf of 9-11 Memorial Garden of Reflection, Inc so that it could hold a Remembrance in Light ceremony on the evening of September 11, 2026. The Remembrance in Light ceremony was intended to be independent of the Township's events and proposed a schedule that would not cause any conflicts with the newly scheduled Township events.

As community members learned about the Township's plan, opposition to the evening ceremony on September 10, 2026, developed. Township residents began attending community meetings to voice their support for holding the Remembrance in Light. Others, including two rabbis, wrote letters supporting the ceremony. Eventually, and likely due to this opposition, the Township decided to hold an event on the evening of September 11, 2026, which would conclude shortly before sunset when Rosh Hashanah begins. Following this event, the Garden would remain open for reflection and a potential candlelight vigil. After this was announced, the Township denied the permit, this time claiming the use of the Garden for an evening ceremony would be incompatible with the Township's revised plan. Based on this timeline, the Township's refusal to authorize the Remembrance in Light ceremony violates 9-11 Memorial Garden of Reflection, Inc.'s First Amendment rights.

The Garden, a township owned park, is a traditional public forum that must be made available to the public consistent with First Amendment rules. *See Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983) ("In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed. At one end of the spectrum are streets and parks

which have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”) (internal citations and quotations deleted). *See also United States v. Marcavage*, 609 F.3d 264, 275 (3d Cir. 2010). (“It is well established that traditional public fora include sidewalks, streets, and parks that the public has historically used for assembly and general communication.”). “[P]ublic places historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be public forums. In such places, the government’s ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place, and manner regulations as long as the restrictions are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” *United States v. Grace*, 461 U.S. 171, 177 (1983) (internal citations and quotations omitted).¹ Here, the Township’s decisions are not narrowly tailored to a significant government interest and do not leave open alternative channels of communication.

First, the Township’s claimed interest in respecting a religious holiday is not narrowly tailored because the Township’s restrictions have “an insufficient nexus with [] the public interests” they are meant to serve. *Grace*, 461 U.S. at 181; *See also McCullen v. Coakley*, 573 U.S. 464, 497 (2014) (striking down a content neutral law because it “took the extreme step of closing a substantial portion of a traditional public forum to all speakers . . . without seriously addressing the problem through alternatives that leave the forum open for its time-honored purposes.”). Permitting policies must also meet constitutional requirements, *Forsyth Cnty v. Nationalist Movement*, 505 U.S. 123, 130 (1992), and “contain adequate standards to guide the official’s decision and render it subject to effective judicial review,” *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 (2002).

Rather than enact modest, constitutional restrictions to ensure Township residents can observe their holiday, the Township is attempting to ban all expressive activities from occurring on Township owned properties on the evening of September 11, 2026, because some Township residents will be celebrating a religious holiday. The Garden is miles away from the nearest synagogue will not interfere with the ability of Jewish residents to attend synagogue, worship at home, or celebrate in the manner of their choosing. The Township’s wholesale ban on expressive activity is exactly the sort of overly broad ban on speech, untethered restriction that courts have struck down. Further, the Township’s application of its permitting scheme is suspect given the Township’s decision to reject a permit so that it can hold a nearly identical event at the same time and in the same location, after it initially disclaimed use of the space at that time.

Next, even if a court were to find the Township’s restrictions narrowly tailored, the restrictions do not serve a significant government interest. The Township has not suggested that

¹ Solely for purposes of this letter, we assume that the Township’s actions were content and viewpoint neutral and analyze accordingly. Content- and viewpoint-based restrictions are, obviously, subject to heightened protective standards and more exacting judicial scrutiny. The Township’s conduct in first denying and then replacing the Remembrance in Light ceremony, with one that is substantially the same, along with testimony from Board of Supervisors meetings, raises serious viewpoint censorship concerns.

the Remembrance in Light event will disrupt religious services, result in increased traffic, or interfere with the holiday in any way. Nor could it credibly make this assertion. The Township held an Egg-stravaganza Easter egg hunt during Passover.² The Egg-stravaganza event took place over three days and involved events at multiple parks (some very close to synagogues) without disrupting Passover. Further, letters from two rabbis in support of the Remembrance in Light make clear that the Jewish community—whom the Township claims to support—do not find the Township’s reasoning compelling or want its assistance. Rabbi Gross explained in his letter, “an event dedicated to remembrance and reflection is entirely consistent with the spirit of the [holiday].” Letter from Rabbi Yonah Gross, Coalition for Jewish Values to Supervisor Matt Ross, Lower Makefield Board of Supervisors (May 21, 2026). He follows this by noting that using Rosh Hashanah as an excuse to justify the Township’s actions is “unfair and counterproductive,” *id.*, confirming the lack of any real justification for the Township’s actions. Finally, the Township’s actions do not leave open alternative channels of communication. In forbidding all remembrance ceremonies after sundown on September 11, 2026, the Township has left open *no* alternative channels of communication.

Given the above, we request that the Township meet with us and board members from 9-11 Memorial Garden of Reflection, Inc. to discuss allowing the Remembrance in Light ceremony to proceed on the evening of September 11, 2026. Given that this date is rapidly approaching, we believe it is in the parties’ best interests to move towards an amicable resolution of this dispute so that the focus can return to the families and their loved ones. I can be reached by email at bmadway@aclupa.org.

Respectfully,

/s/ Brynne S. Madway
Brynne Madway
Senior Staff Attorney

Witold Walczak
Legal Director

American Civil Liberties
Union of Pennsylvania

² Like Rosh Hashanah, Passover begins at sundown, takes place over multiple days, and is considered a Yom Tov day when work is forbidden.