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September 20, 2021

VIA E-MAIL

Mayor Michael Hancock
c/o Kristin Bronson
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Mayor Hancock:

I am writing as counsel for Four Winds American Indian Council (“Four Winds”). Over the past two weeks, Four Winds American Indian Council has endured a racist and imperialist campaign of harassment and intimidation by Denver and its officials. Four Winds is demanding that Denver cease its actions immediately.

On August 31, 2021, Denver conducted a brutal sweep of a majority Native encampment just outside the doors of Four Winds. For multiple weeks encampment residents had been welcomed by Four Winds and peacefully co-existing with the other neighbors near the corner of 5th Avenue and Bannock Street. The encampment was well-kempt and respectful of the community in which it was located. The encampment began being called the “Denver Indigenous Refugee Camp”¹ because, as one resident described it, they had “been rendered refugees” in their “own homeland” by the theft of their land, and then by the enforcement of the Camping Ban.²

In an attempt to stop the sweep, Four Winds organized a resistance, engaged in vociferous speech through multiple media outlets, and even met with you, Mayor Hancock, in an

¹ According to the 2021 Point in Time Count, American Indians and Alaska Natives make up over 5% of Denver’s homeless population, despite accounting for less than 1% of the general population. This disproportionate representation points to the need for urgent solutions that address Denver’s historical relationship with Native Americans.

² *American Indians in Denver respond to Mayor Hancock’s planned homeless sweep*, Indian Country Today, available at: <https://indiancountrytoday.com/the-press-pool/american-indians-in-denver-respond-to-mayor-hancocks-planned-homeless-sweep>.

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attempt to broker some sort of agreement to stop the forceful displacement of the Native majority refugee camp that had formed outside the Four Winds building. Four Winds was speaking to you as rightful owners of the land on which the sweep would occur. Four Winds' members are the descendants of Native people who lived on this land before it was stolen by the federal government under the invalid Treaty of Fort Wise. That you would not listen to their requests, and would instead evict Native people from that land through a sweep, is an abomination and demonstrates the emptiness of your administration's professed solidarity with indigenous community. As one encampment resident aptly stated: Denver "is built on stolen Indian land, in violation of sacred treaties, and the Mayor's camping ban is continuing that legacy."³

On the morning of the sweep, members of Four Winds gathered and stood in solidarity with those being forcefully evicted. They spoke out, chanted, and helped those who were being forced to vacate land that was rightfully theirs under the 1851 and 1868 Fort Laramie Treaties. Four Winds' forceful speech against the sweep, and association with the encampment residents during the sweep, have led to significant reprisal by Denver.

Since the sweep, Denver has continued to target Four Winds for daring to speak up and stand in solidarity. Immediately after the sweep, Denver erected a large chain-link fence on the parkway just outside of Four Winds, which remained up for almost two weeks. No other house, church, or other organization in the Baker neighborhood, or Denver, has had to endure having a large and unsightly chain-link fence practically encircling their property. The decision for Denver to literally fence-in Four Winds is not without historical significance, as Denver has repeatedly cordoned off Native residents from the rest of the city throughout its history.

Then, Denver posted a police officer outside of Four Winds, and that officer has monitored Four Winds, and its members, twenty-four hours a day, seven days a week. This constant surveillance continued until recently and is an act of brazen intimidation. Again, Denver's current actions harken back to its historical surveillance and harassment of its Native residents. A photo of the fence and officer outside of Four Winds is below:



³ *Id.*

Recently, Denver stepped up its intimidation tactics by issuing to Four Winds a discriminatory, and illegal, notice that it is allegedly violating Section 5.4.3.4 of Denver's zoning code by allowing five Native unhoused residents to reside on its own property. It is clear that the enforcement of the zoning code is being discriminatorily targeted against Four Winds because they are an organization of Native residents of Denver and they have dared to question the mayor's actions in brutally sweeping the homeless encampment outside their doorstep. There are innumerable other residences, churches, and businesses throughout Denver, and even down the street from Four Winds, that have items other than "outdoor furniture, barbeque grills, kids toys, and lawn equipment" outside of "a completely enclosed structure" on their property. But, Four Winds is the only property (to our knowledge) that has received such a notice. The problematic historical implications are obvious: yet again Denver is trying to restrict how Four Winds and its native members are allowed to use their own land.

Now, Denver is trying to force Four Winds to convert its community center, which is broadly used by all members of the Native community for the physical, spiritual, political, community, economic, and social liberation of all Native peoples, into a homeless shelter. Not only are homeless shelters ineffective at solving homelessness (and only serve to warehouse unhoused individuals out of sight), but this is also just another example of Denver taking Native people's property for its own use. If Denver wishes to operate a homeless shelter in Four Winds' neighborhood, it has the ability to do so. However, Denver does not have the authority to push its responsibilities to care for our unhoused neighbors off onto Four Winds and its Native members.

Not only are all of these actions that Denver has taken immoral, they are also illegal. Denver's actions to date, as well as its threatened actions, likely violate Four Winds' rights under the Fourteenth Amendment's equal protection clause. Four Winds is an organization of Native people, which makes it part of a protected class under equal protection clause jurisprudence.⁴ Therefore, any singling out of Four Winds without a reason that satisfies a compelling government interest, and that is narrowly tailored to that interest, is unconstitutional.⁵ Denver's actions cannot meet this high burden.

Denver's actions to date, as well as its threatened actions, also likely violate Four Winds' rights under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). RLUIPA prohibits land use regulations that substantially burden an institution's religious exercise unless the government can show that the burden furthers a compelling government interest and is the least restrictive means of furthering that interest. Courts have routinely held that social services provided by institutions, such as services for homeless populations, qualify as religious exercise.

⁴ See *Courtney v. Or. Dep't of State Police*, No. 06-6223-TC, 2008 U.S. Dist. LEXIS 53282, at *20 (D. Or. July 11, 2008); *Gensaw v. Del Norte County Unified School Dist.*, No. C 07-3009 TEH, 2008 U.S. Dist. LEXIS 54732, 2008 WL 1777668 (N.D. Cal., Apr. 18, 2008).

⁵ *United States v. Chalan*, 812 F.2d 1302, 1304 (10th Cir. 1987) (holding that the government's use of peremptory challenges against all potential jurors who were Native Americans established a prima facie case of racial discrimination under the Fourteenth Amendment).

⁶ Further, disparate treatment can constitute a violation of RLUIPA as well.⁷ Denver's decision to target Four Winds, and only Four Winds, for this zoning code violation that is clearly violated daily throughout Denver demonstrates the illegal purpose of Denver's actions.

Denver's actions to date, as well as its threatened actions, also likely violate Four Winds' rights under the Fourth Amendment. Recently, the Colorado Supreme Court held that continuous surveillance of the area surrounding a building "all day, every day" violated the Fourth Amendment. *People v. Tafoya*, 2021 CO 62, ¶ 46 (Colo. 2021). The surveillance in that case, like Denver's surveillance of Four Winds over the past few weeks, violated the Fourth Amendment because it "involved a degree of intrusion that a reasonable person would not have anticipated." *Id.*, at ¶ 50 (quoting *United States v. Jones*, 565 U.S. 400, 429 (2012) (Alito, J., concurring in the judgment)).

Finally, Denver's actions to date, as well as its threatened actions, likely violate Four Winds' right to be free from retaliation for engaging in free speech. Four Winds was engaged in classically political speech in speaking out against the inhumanity of the sweep.⁸ It has been subjected to significant retaliation by Denver because of that (including the erection of a fence encircling their property, twenty-four hour surveillance by the Denver police department, and the issuance of a sham and retaliatory zoning code violation notice). And, Denver's actions would certainly chill a person of ordinary firmness from continuing to challenge its actions, even if Four Winds and its members (having faced centuries of oppression from occupiers of its land and been resilient) have refused to back down.⁹

Denver must immediately stop violating Four Winds' rights. We welcome the opportunity to speak about these issues, but only after Denver ceases its campaign of retaliation and harassment against Four Winds. We look forward to your response.

Sincerely,

⁶ See e.g., *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 Fed.Appx. 726, 729 (9th Cir. 2016); *Layman Lessons, Inc. v. City of Millersville*, 636 F.Supp. 620, 648=50 (M.D. Tenn. 2008).

⁷ See *Rocky Mountain Christian Church v. Bd. Of Cty. Comm'rs*, 613 F.3d 1229, 1236 (10th Cir. 2010).

⁸ *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (holding that speech on matters of public concern "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.").

⁹ *Worrell v. Henry*, 219 F.3d 1197, 1212 (10th Cir. 2000) (holding that "any form of retaliation for exercising one's [First Amendment rights], including... threatened prosecution, bad faith investigation, and legal harassment, constitutes an infringement of that freedom"); *Blankenship v. Manchin*, 471 F.3d 523, 529 (4th Cir. 2006) (holding that an "imminent [threat of] adverse regulatory action" would chill a person of ordinary firmness); *Power v. Summers*, 226 F.3d 815, 820 (7th Cir. 2000) (holding that harassment and ridicule was sufficient to violate the First Amendment).

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A handwritten signature in black ink, appearing to read 'AMcNulty', with a long horizontal flourish extending to the right.

Andy McNulty

cc: Four Winds American Indian Council