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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAITH CENTER CHURCH EVANGELISTIC
MINISTRIES, et al.,

No. C 04-03111 JSW

Plaintiffs,

v.

**ORDER GRANTING PLAINTIFFS’
MOTION FOR A PRELIMINARY
INJUNCTION**

FEDERAL D. GLOVER, et al.,

Defendants.

I. INTRODUCTION

This matter comes before the Court upon consideration of Plaintiffs’ motion for a preliminary injunction. Plaintiffs move to enjoin Defendants from enforcing a policy that prohibits using public meeting rooms within the Contra Costa County Library system, and in particular the Antioch Branch, for “religious services.”¹

Having considered the parties’ pleadings, including supplemental briefing ordered by the Court, the record in this case, relevant legal authority, and having had the benefit of oral argument, the Court GRANTS Plaintiffs’ motion for a preliminary injunction.

¹ Plaintiffs allege that Defendants: (1) violated their rights to freedom of speech under the First Amendment to the United States Constitution; (2) violated their rights to free exercise of religion under the First Amendment of the United States Constitution; (3) violated the Establishment Clause of the First Amendment to the United States Constitution; and (4) violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (Amended Verified Complaint, ¶¶ 86-114.)

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8 **II. FACTUAL SUMMARY**

9 When faced with a motion for a preliminary injunction, the Court “is not required to make any
10 binding findings of fact; it need only find probabilities that the necessary facts can be proved.” *Sierra*
11 *On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir. 1984). Accordingly, the
12 facts recited herein are not to be considered final and binding on the rest of the proceedings. Rather,
13 based on the current evidentiary record, the Court concludes they are substantially likely to be proved
14 at trial.

15 **A. The Parties.**

16 Plaintiff Faith Center Church Evangelistic Ministries (“Faith Center”), is a non-profit religious
17 corporation. Plaintiff Hattie Mae Hopkins (“Dr. Hopkins”) is the leader of Faith Center. (Amended
18 Verified Complaint (“Complaint”), ¶¶ 10-11.) Defendants are members of the Contra Costa County
19 Board of Supervisors, the Contra Costa County Administrator, the Contra Costa County Librarian,
20 the Senior Branch Librarian of the Antioch Branch of the Contra Costa County Public Library System,
21 and the Administrative Deputy Director of the Antioch Branch.² (*Id.*, ¶¶ 12-20.)

22 Dr. Hopkins is the leader of Faith Center and believes that she is called to share her faith with
23 others. Dr. Hopkins also believes that there are many individuals who need to hear about the gospel
24 of Jesus Christ but who may never enter a traditional church building. (*Id.*, ¶¶ 21-23.) Under the
25 auspices of Faith Center, Dr. Hopkins holds meetings at which participants discuss educational,
26 cultural, and community issues from a religious perspective, engage in religious speech and religious
27 worship, discuss the Bible and other religious books, teach, pray, sing, share testimonies, share meals,
28 and discuss social and political issues. (*Id.*, ¶¶ 25-26; Declaration of Danielle Merida (“Merida
Decl.”), Ex. A.)³ These meetings are not held inside a traditional church building. (Complaint, ¶ 26.)

26 ² The Court hereafter refers to the Antioch Branch of the Contra Costa County
27 Library system as “the Library.”

28 ³ As noted, Plaintiffs submitted a verified complaint and, as such, have attested to the
truth of the facts set forth therein.

1 **B. The Policies At Issue.**

2 Contra Costa County, by resolution, has adopted a policy relating to the use of meeting rooms
3 in its libraries. (Complaint, Exs. C, E; Declaration of Anne Cain (“Cain Decl.”), Ex. A.) Pursuant to
4 that policy, Defendants “encourage the use of library meeting rooms for educational, cultural and
5 community related meetings, programs, and activities.” (Cain Decl., Ex. A.) According to the policy,
6 “non-profit and civic organizations, for-profit organizations, schools, and governmental organizations”
7 may use library meeting rooms. There are some restrictions in place. Pertinent to this motion is the
8 restriction on “Religious Use,” which has twice been amended since this action was filed. The policy
9 initially provided that “[l]ibrary meeting rooms shall not be used for religious purposes” (hereinafter
10 “the Policy”). (Complaint, Ex. C.) In or about August 2004, the policy was amended to prohibit use
11 of library meeting rooms for “religious services or activities.” (*Id.*, Ex. E.) In or about December
12 2004, the policy again was amended and currently prohibits the use of library meeting rooms for
13 “religious services” (hereinafter “the Amended Policy”). (Cain Decl., Ex. A.)

14 The record currently before the Court demonstrates the following additional restrictions on use
15 of library meeting rooms: (1) a person or entity wishing to use a meeting room must complete an
16 application and reservations are contingent upon approval by the County; (2) if the purpose for which
17 the meeting room is used involves solicitation or selling, is closed to the general public, or if an
18 admission fee is charged by the applicant, the applicant must pay a fee; and (3) schools may not use a
19 meeting room for “instructional purposes as a regular part of the curriculum.” (Cain Decl., ¶ 6, Ex.
20 A.) The policy also refers to implementing rules and regulations, but those rules and regulations
21 currently are not in the record. (*Id.*)

22 Defendants have approved applications to use the meeting room at the Antioch Branch (the
23 “Library meeting room”) submitted by the Sierra Club for purposes of letter writing, Narcotics
24 Anonymous for a recovery meeting, and the East Contra Costa Democratic Club to “let people learn
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1 about Democratic candidates and issues.” (Affidavit of Robert H. Leach (“Leach Aff.”), Exs. D, E,
2 H.)⁴

3 **C. Events Preceding the Filing of this Action.**

4 In May 2004, Dr. Hopkins obtained and completed applications to use the Library meeting
5 room on May 29 and July 31, 2004. (Complaint, ¶¶ 28-29, 36, 39-41 & Exs. A, B.) Prior to the
6 May 29 meeting, Dr. Hopkins phoned the Library twice to confirm that Faith Center’s dates were on
7 the Library calendar and was advised that they were. (*Id.*, ¶¶ 42-43.) Dr. Hopkins and Library staff
8 also discussed the fact that the room was not soundproofed. (*Id.*, ¶¶ 44-48.) Dr. Hopkins advised
9 the Library staff that noise from Library patrons would not bother Plaintiffs’ meetings, and Dr.
10 Hopkins was advised that noise from the meeting would not bother Library patrons. (*Id.*, ¶¶ 44-48.)⁵

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12 In Faith Center’s applications, Dr. Hopkins is identified as a “Pastor,” and the applications
13 state that Plaintiffs’ purpose for using the room was for “prayer, praise and worship open to public,
14 purpose to teach and encourage salvation through Jesus Christ and build up community [*sic*].” (*Id.*,
15 Exs. A, B.)⁶ Faith Center held the meeting scheduled for May 29, 2004, which included the activities
16 that Faith Center meetings generally include. (*Id.*, ¶¶ 26, 49-50.) Plaintiffs did not use musical
17 instruments or amplified sound during the meeting. (*Id.*, ¶ 51.) Toward the end of the meeting,
18 Plaintiffs were advised by Library personnel that groups were not permitted to use the meeting room
19 for religious activities. (*Id.*, ¶ 52.) Plaintiffs were advised that the problem regarding their use of the

21 ⁴ The Leach Affidavit also includes applications to other branches of the Contra
22 Costa County Library system. The relevant forum for purposes of this case, however, is the
23 Antioch Branch Library meeting room, and it is those applications which the Court has considered
24 in resolving this motion. *See, e.g., DiLoreto v. Downey Unified School Dist. Bd. of Ed.*, 196
F.3d 958, 967 (9th Cir. 1999) (finding that although another high school within the district
permitted certain types of advertisements, that fact was of no moment because “forum is defined by
access sought by the speaker”).

25 ⁵ Defendants submit evidence that Plaintiffs’ May 29 meeting could be heard
26 “outside the meeting room.” (Cain Decl., ¶ 12.) Defendants, however, have not put forth evidence
that the noise disturbed or otherwise bothered Library patrons.

27 ⁶ Defendants claim that Plaintiffs did not return a completed application for the May
28 29, 2004 date until after the meeting. (Cain Decl., ¶ 10.) However, in a letter dated July 5, 2004,
Dr. Hopkins stated the applications were submitted several weeks before that meeting.
(Complaint, Ex. D.)

1 **B. Plaintiffs Have Established a Likelihood of Success on the Merits.**

2 The legal issues presented by this case are not novel. “Courts often struggle to reconcile the
3 principle of equal access to government buildings, with a competing principle of American public life,
4 that is, the separation of church and state.” *Bronx Household of Faith v. Board of Education of*
5 *the City of New York*, 331 F.3d 342, 344 (2d Cir. 2003). Factually, however, this case appears to
6 present a matter of first impression. The Court has not found any direct authority either permitting or
7 prohibiting a party to use a meeting room in a public library to engage in activities that include conduct
8 that could be categorized as religious services.⁷

9 For the reasons set forth herein, the Court concludes that Plaintiffs have established a that the
10 facts and the law are clearly in their favor and thus have established a likelihood of success on the
11 merits on their First Amendment challenge to the Defendants’ policies and have shown the possibility
12 of irreparable harm.

13 **1. The facts and the law clearly favor Plaintiffs and show that, as applied, the**
14 **Defendants’ policies violate their First Amendment right to freedom of speech.**

15 The First Amendment to the United States Constitution provides that “Congress shall make no
16 law ... abridging the freedom of speech ...” U.S. Const. amend. I. Plaintiffs claim that each iteration
17 of the Library’s policy on religious use of the Library meeting room violates their right to free speech,
18 facially and as applied, because Plaintiffs are not permitted to use the Library meeting room to hold
19 Faith Center meetings, meetings which the record demonstrates include a component that can be
20 characterized as “services.”⁸ (Complaint, Ex. D.) Defendants contend that Plaintiffs can use the
21 Library meeting room to discuss permissible topics from a religious perspective, so long as they do not
22 hold a “religious service.” (Def. Opp. at 19; Def. Supp. Br. at 9-10.)

23 ⁷ In deciding this case, the Court has been mindful of and has struggled with Justice
24 Souter’s views expressed in his dissent in *Good News Club v. Milford Central School*, 533 U.S.
25 98, 139 (2001), notably his view that the majority’s interpretation of the plaintiffs’ activities in that
26 case “would stand for the remarkable proposition that any public [building] opened for civic
meetings must be opened for use as a church, synagogue or mosque.” *Id.* at 139 (Souter, J.,
dissenting.)

27 ⁸ Plaintiffs raise both facial and as applied challenges to the Defendants’ regulation of
28 speech in the Library meeting room. With respect to the as applied challenge, the Court
considered the policy in effect at the time Plaintiffs submitted their application to use the meeting
room, which precluded use of the room for “religious purposes.” With respect to Plaintiffs’ facial
challenge, the Court has considered the Amended Policy, which precludes only religious services.

1 When faced with a challenge to a government regulation based on a claim that the regulation
2 violates a litigant’s First Amendment right to freedom of speech, a court makes three inquiries. It must
3 first determine if the speech in question is in fact protected by the First Amendment. *Cornelius v.*
4 *NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 797 (1985). If the speech is not protected,
5 the inquiry ends. If, however, the speech is protected, the second step in the analysis is to identify the
6 nature of forum in which the speech is regulated. *Id.* The third step is to assess whether a defendant’s
7 justification for excluding a plaintiff from the relevant forum satisfies the requisite standard. *Id.*
8 Viewpoint discrimination, however, is never permissible, even in a non-public forum. *Lamb’s Chapel*
9 *v. Center Moriches Sch. Dist.*, 508 U.S. 384, 394 (1993) (*citing Cornelius*, 473 U.S. at 806).

10 **a. Plaintiffs’ expressive activity is protected by the First Amendment.**

11 Defendants do not dispute that Plaintiffs wish to engage in speech within the Library meeting
12 room that is protected, *i.e.* Plaintiffs’ meetings would encompass discussions of otherwise permissible
13 topics from a religious perspective. *See Good News Club*, 533 U.S. at 111-112; *Lamb’s Chapel*,
14 508 U.S. at 394-395. Defendants also conceded at oral argument that “religious worship” is a
15 protected form of activity under the First Amendment. *See, e.g., Widmar v. Vincent*, 454 U.S. 263,
16 269 (1981) (noting that “religious worship and discussion are forms of speech and association
17 protected by the First Amendment”). Accordingly, the Court will take it as established for purposes of
18 this motion that, whether Plaintiffs’ expressive activities constitute “mere worship” or something more,
19 they are protected by the First Amendment.

20 **b. Plaintiffs have shown that Defendants’ enforcement of the policies is**
21 **substantially likely to result in restricting speech based on viewpoint.**

22 Although the next step in the Court’s inquiry normally would be to examine the nature of the
23 forum, the Court concludes that Defendants’ policies have and can result in discrimination against
24 Plaintiffs’ speech based on its viewpoint.⁹ Defendants contend that precluding religious services does

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26 ⁹ Plaintiffs contend that the Library meeting room is a designated public forum, and
27 thus any regulations on speech must be judged “subject to the same [strict] limitations that govern a
28 traditional public forum.” *DiLoreto*, 196 F.3d at 964-965. Defendants contend the Library
meeting room is only a limited public forum, and thus regulations that are “viewpoint neutral and
reasonable in light of the purpose served by the forum” are constitutionally permissible. *Id.* For
purposes of this motion and on the record before the Court, Plaintiffs have shown that enforcement

1 not constitute viewpoint discrimination, but they acknowledge that at least some of the activities in
2 which Plaintiffs engaged in during the May 29, 2004 meeting were permissible, *i.e.* Plaintiffs discussed
3 otherwise permissible topics from a religious viewpoint. *See Good News Club*, 533 U.S. at 111-112.
4 Defendants also argue that a flyer describing Plaintiffs’ meetings suggests that this case presents a case
5 not yet decided by any court, *i.e.* one in which the “worship” activities can be “divorced from ... other
6 activities permitted in the forum.” *See Bronx Household of Faith*, 331 F.3d at 354. The Court
7 disagrees.

8 In *Widmar*, the Supreme Court noted that the difficulty in determining when activities such as
9 “singing hymns, reading scripture, and teaching biblical principles” transform from a discussion of
10 issues from a religious perspective into worship. *Widmar*, 454 U.S. at 270 n.6; *see also id.* at 272
11 n.11. Thereafter, in *Good News Club*, the Supreme Court placed its focus on the substance of the
12 challenged activities, rather than the label attached to them. *Good News Club*, 533 at 112 n.4. Here,
13 looking at the substance of the activities in which Plaintiffs wish to engage, the Court finds that it cannot
14 parse those activities in such a fashion to separate “mere religious worship” from other permissible
15 activities. In reaching this decision, the Court finds guidance in *Bronx Household of Faith*, 331 F.3d
16 342 and *Campbell v. St. Tammany Parish School Board*, 2003 WL 21783317 (E.D. La. July 30,
17 2003).

18 In *Bronx Household of Faith*, decided after *Good News Club*, the Second Circuit affirmed
19 the district court’s decision to grant a preliminary injunction enjoining the defendants’ policy that
20 prohibited “religious services or religious instruction” in public schools opened for use after hours for
21 “social, civic and recreational meetings and entertainment, and other uses pertaining to the welfare of
22 the community.” *Bronx Household of Faith*, 331 F.3d at 348. The plaintiffs, an evangelical Christian
23 church and its pastors, sought to use school facilities for activities that included “the singing of Christian
24 hymns and songs, prayer, fellowship with other church members and Biblical preaching and teaching,
25 communion, sharing of testimonies, and social fellowship among the church members.” *Id.* at 347.

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27 of the Policy did result in viewpoint discrimination and that it is substantially likely that enforcement
28 of the Amended Policy will also result in restricting speech based on its viewpoint. Accordingly, at
this stage of the litigation, the Court need not and does not reach the question of the nature of the
forum.

1 Like the meetings proposed by Plaintiffs in this case, the plaintiffs' meetings were open to the public.
2 *Id.* As in this case, the plaintiffs were denied access because of the defendants' prohibition on
3 "religious services or instruction" in the forum. *Id.* at 348.

4 The Second Circuit concluded that the plaintiffs were substantially likely to prevail on their
5 First Amendment claims because the court found "no principled basis on which to distinguish the
6 activities set out by the Supreme Court in *Good News Club* from the activities that [plaintiffs] have
7 proposed for [their] Sunday meetings." *Id.* at 354. Recognizing that some of plaintiffs' proposed
8 activities, such as prayer, singing of Christian songs, and communion, were "quintessentially religious,"
9 the court also noted that the plaintiffs' meetings encompassed secular elements, like a fellowship meal.
10 The court concluded that "[o]n these facts, it cannot be said that the meetings of the Bronx Household
11 of Faith constitute only religious worship, separate and apart from any teaching of moral values." *Id.*

12 Similarly, in the *Campbell* case, defendants enacted a regulation precluding religious services
13 or religious instruction in public schools, which the district court classified as limited public fora. On
14 remand for reconsideration in light of *Good News Club*, the district court concluded that the regulation
15 resulted in viewpoint discrimination *even though* plaintiffs' proposed meeting encompassed "what
16 *primarily* was a religious service." *Campbell*, 2003 WL 81783317 at *9 (emphasis in original). The
17 court cited the Supreme Court's statement in *Good News Club* that

18 ... just because a meeting is "quintessentially religious" does not
19 mean it "cannot be characterized properly as the teaching of
20 morals and character development." ... Likewise, simply
21 because *Campbell's* proposed service was "quintessentially
22 religious" does not preclude it from being characterized as a
discussion of family and political issues. *Here the proposed
meeting was not "mere religious worship," but included a
component within the permissible scope of the limited
forum.*

23 *Id.* (emphasis added) (citations omitted). Accordingly, acknowledging the difficulties presented in
24 attempting to parse the plaintiffs' proposed activities, the district court concluded that because the
25 plaintiffs' meeting included discussions of permissible topics from a religious perspective as well as
26 "worship", the defendants could not preclude the plaintiffs from meeting in the forum. *Id.* at *10.

27 Here, Plaintiffs' meetings combine activities that, like those at issue in *Bronx Household of*
28 *Faith* and *Campbell*, may be classified as "quintessentially religious." However, the meetings also

1 encompass secular components that fit within the overall purposes for which Defendants have opened
2 the forum. Like the courts in *Bronx Household of Faith* and *Campbell*, this Court cannot classify
3 Plaintiffs’ proposed use of the Library meeting room as “mere religious worship.” To follow the
4 reasoning of the Second Circuit, because Defendants have authorized other groups to use the Library
5 meeting room for educational, cultural and community related meetings, under Supreme Court
6 authority, there is a substantial likelihood that Plaintiffs can establish that Defendants cannot exclude
7 their proposed activities without engaging in unconstitutional viewpoint discrimination. *See Bronx*
8 *Household*, 331 F.3d at 354.

9 Unlike the plaintiffs in *Bronx Household of Faith* and *Campbell*, Plaintiffs in this case want
10 access to a meeting room in a public library rather than a public school and want access to that room
11 during normal Library hours. The record demonstrates that the meeting room is enclosed and, thus,
12 other Library patrons are not compelled to observe Plaintiffs’ activities.¹⁰ (*See* Cain Decl., ¶ 5.) For
13 this reason, and based on the current record, the Court does not find a sufficient distinction between
14 the public school facilities at issue in *Bronx Household of Faith* and *Campbell* and the forum here to
15 warrant a different outcome. Accordingly, the Court concludes that Plaintiffs have established a
16 likelihood of success on the merits of their claim that Defendants have violated their First Amendment
17 right to free speech.

18 **c. Defendants have not shown a compelling state interest justifying**
19 **imposing the restriction on religious services.**

20 Defendants contend that they must enforce the policy to avoid violating the Establishment
21 Clause. The Supreme Court has foreclosed this argument by consistently holding that a policy of equal
22 access does not violate the Establishment Clause. *See Good News Club*, 533 U.S. at 112-119;
23 *Lamb’s Chapel*, 508 U.S. at 394-396; *Widmar*, 454 U.S. 271-275. *Accord Prince v. Jacoby*, 303
24 F.3d 1074, 1092 (9th Cir. 2002) (finding no establishment clause violation by allowing religious group
25 access to forum even if groups activities included some “devotional exercises”).

27 ¹⁰ As noted, the record suggests that Library patrons could hear Plaintiffs’ meeting.
28 (Cain Decl., ¶ 12.) That is not the basis on which Plaintiffs were excluded from the forum. Nor
has it been suggested that Library patrons were bothered by the noise.

1 In general, “a policy will not offend the Establishment Clause if it can pass a three-pronged
2 test”: (1) the policy must have a secular legislative purpose; (2) its principal or primary effect must not
3 be one that advances or inhibits religion; and (3) the policy must not “foster an excessive government
4 entanglement with religion.” *Widmar*, 454 U.S. at 271 (quoting *Lemon v. Kurtzman*, 403 U.S. 602,
5 612-613 (1971)). Concluding that the policy at issue in *Widmar* passed the first and third prongs of
6 the *Lemon* test, the Supreme Court found that it would also not violate the second prong because “an
7 open forum in a public university does not confer any imprimatur of state approval on religious sects or
8 practices,” and because the provision of benefits to a wide range of groups was “an important index of
9 secular effect.” *Id.* at 275. Finally, the Supreme Court also found persuasive the fact that there was
10 no empirical evidence suggesting that religious groups would dominate the forum. *Id.*; see also
11 *Lamb’s Chapel*, 508 U.S. at 395 (holding that policy would not violate Establishment Clause where
12 film would be shown after school hours, would not have been sponsored by the school, and would
13 have been open to the public).

14 The parties agree that the Defendants’ general policy in opening the forum has a secular
15 purpose. With respect to concerns about the “primary effect” prong, as noted, the forum in question is
16 located within a public library rather than a public school but, as is discussed above, the Library
17 meeting room is enclosed and Library patrons are not necessarily exposed to Plaintiffs’ activities. In
18 addition, Faith Center meetings are open to the general public and there is no evidence that
19 Defendants or their employees would attend the meetings. Finally, Defendants have permitted a wide
20 variety of groups to use the room for a wide variety of purposes, and there is no evidence that religious
21 groups will dominate or have dominated the use of the Library meeting room. (See Cain Decl., Ex. A;
22 Leach Aff., Exs. D, E, H.) On the record currently before the Court, which presents a factual situation
23 similar to the factual situations presented in the *Good News Club*, *Lamb’s Chapel*, *Bronx Household*
24 *of Faith* and *Campbell* cases, the Court finds that opening the forum to Plaintiffs would not have the
25 primary effect of advancing or inhibiting religion. Finally, for purposes of this motion, the Court
26 concludes that requiring equal access to the forum would not result in an excessive entanglement in
27 religion. Accordingly, at this stage of the proceedings, Defendants’ reliance on the Establishment
28 Clause does not warrant denial of Plaintiffs’ motion.

1 At oral argument, Defendants also forcefully argued that if the Court enjoins them from
2 enforcing the Amended Policy, they will be faced with the *possibility* of challenges by other religious
3 groups relating to the Free Exercise Clause of the First Amendment. That argument depends,
4 however, on a challenge to a regulation or rule other than the one at issue, matters which are not
5 before this Court.¹¹ Thus, at this stage of the proceedings, the Court concludes this hypothetical
6 concern also cannot justify denying Plaintiffs’ motion.

7 Therefore, the Court concludes Plaintiffs have established a substantial likelihood of success
8 on the merits of their claim that the Defendants have violated their First Amendment right to freedom of
9 speech.

10 **B. Plaintiffs Have Established a Showing of Irreparable Harm if the Injunction Is**
11 **Not Granted.**

12 In addition to establishing a substantial likelihood of success on the merits, Plaintiffs must
13 establish a showing of irreparable harm. The Court concludes they have met their burden. “The loss
14 of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable
15 injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In addition, “a party seeking preliminary
16 injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the
17 grant of relief by demonstrating the existence of a colorable First Amendment claim.” *Sammartano*,
18 303 F.3d at 973 (quoting *Viacom Int’l, Inc. v. F.C.C.*, 828 F. Supp. 741, 744 (N.D. Cal. 1993)).

19 Because the Court has concluded that Plaintiffs have established that they are substantially
20 likely to prevail on their claim that enforcement of the various iterations of Defendants’ policies results
21 in the violation of their First Amendment right to freedom of speech, the Court concludes that they
22 have demonstrated the requisite showing of irreparable harm. *See Sammartano*, 303 F.3d at 973-
23 974 (noting that under Ninth Circuit precedent “when the harm claim is a serious infringement on core
24 expressive freedoms, a plaintiff is entitled to an injunction even on a lesser showing of
25 meritoriousness”); *cf. Bronx Household*, 331 F.3d at 349-350 (affirming finding of irreparable harm
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27 ¹¹ Defendants did not enter the rules and regulations governing use of the Library
28 meeting room into the record, so the Court cannot evaluate whether enforcement of those rules and
regulations might possibly lead to a potential Free Exercise violation.

1 where “alleged deprivation of plaintiffs’ First Amendment rights” arose directly from challenged
2 policy).

3 **C. Public Interest.**

4 Finally, the Court considers the public interest in determining whether Plaintiffs have met their
5 burden to show issuance of the injunction is warranted. *See Sammartano*, 303 F.3d at 974. “The
6 public interest inquiry primarily addresses impact on non-parties rather than parties.” *Id.* “Courts
7 considering requests for preliminary injunctions have consistently recognized the significant public
8 interest in upholding First Amendment principles.” *Id.* (citing cases). The Court’s ruling in this case
9 has the potential to impact non-parties. The Court concludes that continued enforcement of the
10 potentially unconstitutional Amended Policy has not only impacted and infringed upon Plaintiffs’ First
11 Amendment rights, but also would infringe upon interests of other groups or individuals who may wish
12 to use the Library meeting room to engage in activities that may combine “quintessentially religious”
13 activities with activities that are otherwise permitted in the forum. Accordingly, the Court concludes
14 that the public interest weighs in favor of granting the injunction.

1 **D. Bond.**

2 “No restraining order or preliminary injunction shall issue except upon the giving of security by
3 the applicant, in such sum as the court deems proper, for the payment of such costs and damages as
4 may be incurred or suffered by any party who is found to have been wrongfully enjoined or
5 restrained.” Fed. R. Civ. P. 65(c). The Court, however, retains the discretion to set the amount of
6 security required, and in some cases courts have dispensed with the security requirement altogether.
7 *See, e.g., Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003).

8 At the hearing on this matter, Plaintiffs urged the Court to waive the security requirement. The
9 Court has considered the need for a bond in this case and determines that this is a case where waiver
10 of a bond is appropriate because there is no significant risk that Defendants will incur damages as a
11 result of the injunction.

12 **V. CONCLUSION**

13 For the foregoing reasons, the Court hereby GRANTS Plaintiffs’ motion for a preliminary
14 injunction. Accordingly, Defendants are hereby enjoined from enforcing the “Religious Use” provision
15 of the Amended Policy so as to deny Plaintiffs’ application to reserve the Library meeting room for
16 meetings that include religious services, or the application of any similarly situated individual or entity.
17 The Court denies Plaintiffs’ request that the injunction preclude Defendants from closing the forum
18 pending the outcome of this litigation.

19 Furthermore, in order to give the Defendants sufficient time to evaluate and to implement this
20 injunction, the Court FURTHER ORDERS that this preliminary injunction shall not take effect until
21 Tuesday, June 7, 2005 at 9:00 a.m.

22 **IT IS SO ORDERED.**

23
24 Dated: May 23, 2005

/s/ Jeffrey S. White

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE