



August 29, 2013

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Re: Violation of First Amendment in Greenfield During Public Festival

Dear Mr. Neitzke, Wentlandt, Brunner, Pyzyk, and Council Members:

Dan Lawrence contacted Alliance Defending Freedom regarding his desire to engage in religious dialogue and distribute Bibles on certain public streets in

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Greenfield during the Harley Davidson Festival. By way of introduction, Alliance Defending Freedom is an alliance-building, non-profit legal organization that advocates for the right of people to freely live out their faith. And Lawrence is a pastor who desires to express his religious beliefs in public areas in Greenfield.

Lawrence and a few of his friends desire to go onto W. Layton Avenue to express their beliefs via one-on-one conversation and literature distribution during the Harley Davidson Festival. During this Festival, part of W. Layton Avenue is blocked off and closed to vehicular traffic. However, at all times during the Festival, this part of W. Layton is open to pedestrian traffic. There is no admission charged for the Festival area; nor are there any barriers preventing pedestrian access. The Festival is at all times free and open to the general public.

On August 28, 2013, Lawrence's friend, David Murray, went with one other person to distribute Bibles and converse on W. Layton within the Festival area. But after a short time, a security officer approached Murray and ordered him to leave the area because the owner of the area did not want him on the property. Murray objected and continued his expression. A few minutes later, some "auxiliary" police officers approached Murray and ordered him and his friend to leave the venue. Murray again disputed this order and went to talk to a nearby Greenfield police officer. This officer explained that Murray did indeed have a right to express his beliefs on W. Layton Street. So Murray and his friend again returned to W. Layton and distributed Bibles. About 20 minutes later, security officials and another Greenfield police officer dressed in full police uniform approached and ordered Murray to leave the street and move to the adjacent sidewalk. This alternative, however, will simply not work because the sidewalks are behind the Festival vendors and thus no one accesses the sidewalks. For this reason, Murray went and spoke with Captain Brunner and expressed his desire to distribute Bibles on the street. But Brunner reiterated that Murray was not allowed to distribute Bibles on the street and that he had to distribute Bibles on the sidewalk.

Murray then called Lawrence about the matter. Lawrence eventually arrived and talked to Captain Brunner. Brunner stated that the street was private property, and therefore Lawrence and his friends would be cited for trespassing if they continued to distribute Bibles on the street. Then, the next morning, Lawrence went to the same area and spoke to the Assistant Police Chief. According to the Assistant Police Chief, the City Attorney had determined that the street was private property and therefore Lawrence and his friends could not distribute Bibles there. Thus, under threat of arrest and citation, Lawrence, Murray, and their friends stopped their literature distribution and conversation on W. Layton Avenue.

## LEGAL ANALYSIS

### **THE FIRST AMENDMENT PROTECTS LAWRENCE'S DESIRED SPEECH**

Lawrence desires to convey his religious beliefs through activities protected by the First Amendment of the United States Constitution. According to the Supreme Court, oral and written dissemination of religious viewpoints are entitled to the utmost constitutional protection. *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). Likewise, literature distribution constitutes protected speech. *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939). Thus, Lawrence's desired speech is covered by the First Amendment.

### **INDIVIDUALS HAVE THE RIGHT TO FREELY EXPRESS THEMSELVES IN TRADITIONAL PUBLIC FORA SUCH AS PUBLIC STREETS**

The government's ability to regulate speech on public property depends "on the character of the property at issue." *Frisby v. Schultz*, 487 U.S. 474, 479 (1988) (citation omitted). Lawrence desires to distribute Bibles on a blocked off segment of W. Layton Avenue, a public street. Federal courts have consistently characterized such places as "quintessential" public fora for speech. See, e.g., *United States v. Grace*, 461 U.S. 171, 179 (1983) (noting that areas such as "streets, sidewalks, and parks, are considered, without more, to be 'public forums.'"); *Surita v. Hyde*, 665 F.3d 860, 875 (7th Cir. 2011) ("Parks and streets are traditional public forums."). Therefore, the area in which Lawrence wants to speak is unquestionably a traditional public forum.

This categorization is significant because expression in a traditional public forum deserves the highest level of protection, and any infringement of speech activity there must overcome great scrutiny. *United States v. Kokinda*, 497 U.S. 720, 726 (1990). The ability of Greenfield to regulate Lawrence's speech on the public sidewalk is severely restricted. *Boos v. Barry*, 485 U.S. 312, 318 (1988). In order to meet this high standard, Greenfield must prove that its regulation is 1) content-neutral, 2) narrowly tailored to serve a significant government interest, and 3) leaves open ample means of alternate communication. *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 45 (1983).

### **NEITHER THE CITY NOR THE FESTIVAL ORGANIZERS MAY TRANSFORM THE NATURE OF THE TRADITIONAL PUBLIC FORA**

It is also worth noting that Greenfield may not change the character of a traditional public forum by giving a permit to a private entity. Government "may not by its own *ipse dixit* destroy the 'public forum' status of streets and parks which have historically been public forums..." *United States Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 133 (1981).

For this reason, when sidewalks and streets remain open to the public, they retain their status as traditional public fora. For example, in *Parks v. City of Columbus*, Columbus provided a permit to a private party to hold an arts festival on public streets open to the public. 395 F.3d 643, 645-46 (6th Cir. 2005). Columbus then prevented a street preacher from speaking and distributing literature at the festival. *Id.* Columbus argued that the festival altered the character of the public streets. *Id.* at 649. But the Sixth Circuit flatly rejected this argument. *Id.* at 652 (“The City cannot, however, claim that one’s constitutionally protected rights disappear because a private party is hosting an event that remained free and open to the public.”). Other courts, including the Seventh Circuit, agree with this analysis. *Teesdale v. City of Chicago*, 690 F.3d 829, 834 (7th Cir. 2012) (“The city streets are a traditional public forum, and their character as a public forum is retained even though they are used for a public festival sponsored by a private entity.”). *Accord Startzell v. City of Philadelphia*, 533 F.3d 183, 194-95 (3d Cir. 2008); *Dietrich v. John Ascuaga’s Nugget*, 548 F.3d 892, 899 (9th Cir. 2008); *Gathright v. City of Portland*, 439 F.3d 573, 579 (9th Cir. 2006); *Ascherl v. City of Issaquah*, No. C11–1298 MJP, 2011 WL 4404145, at \*3 (W.D.Wash. Sept 21, 2011). In light of this logic, there is no question that W. Layton Avenue remains a traditional public forum during the Harley Davidson Festival.

#### **BAN ON LAWRENCE IS NOT NARROWLY TAILORED**

Because Lawrence and his friends attempted to express their beliefs in a traditional public forum, any regulation on his speech must be narrowly tailored to serve a significant government interest and leave open alternative avenues for communication. To be narrowly tailored, a regulation may not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989). *See also Weinberg v. City of Chicago*, 310 F.3d 1029, 1038 (7th Cir. 2002) (“In the context of a First Amendment challenge under the narrowly tailored test, the government has the burden of showing that there is evidence supporting its proffered justification.”).

The regulation imposed by Greenfield cannot satisfy this test because Greenfield officials banned all of Lawrence’s expression on W. Layton Avenue. This ban is substantially overbroad. Indeed, courts routinely invalidate bans on expression in traditional fora because peaceful activities like literature distribution do not cause any problems in traditional fora. *See, e.g., Grace*, 461 U.S. at 176 (invalidating ban on literature distribution on sidewalk around Supreme Court because such ban not narrowly tailored to prevent congestion or ensure safety); *Schneider v. New Jersey*, 308 U.S. 147, 157-64 (1939) (invalidating ban on literature distribution occurring on public sidewalks). Nor can Greenfield avoid this logic by pointing to nearby sidewalks where expression may occur. Courts do not allow cities to ban expression in one area of a traditional forum by allowing expression in other

areas in that forum. *See, e.g., Lederman v. United States*, 291 F.3d 36, 39-40 (D.C. Cir. 2002) (invalidating ban on literature distribution and verbal expression in no-demonstration zone on sidewalk on Capitol grounds even though expression was allowed in nearby lawn area on Capitol grounds); *Gerritsen v. City of Los Angeles*, 994 F.2d 570, 577 (9th Cir. 1993) (invalidating ban on literature distribution in certain parts of city park).

Courts have even applied this logic to invalidate “speech zones” during a festival like the Harley Davidson Festival. In *Saieg v. City of Dearborn* for example, a city banned literature distribution throughout a street festival, free and open to the public but allowed literature distribution from certain booths and tables within the festival. 641 F.3d 727, 729-32 (6th Cir. 2011). Though the city defended this ban as necessary to relieve “pedestrian overcrowding,” enhance “traffic flow,” minimize “threats to public safety,” and limit “disorderliness at the Festival, the Sixth Circuit invalidated the ban because it did not serve any legitimate interest in a narrowly tailored way. *See id.* at 737 (“Therefore, because Festival organizers permit public traffic on the sidewalks next to Warren Avenue, the interest in curtailing First Amendment expression on those sidewalks is not substantial.”).

Likewise, another federal court recently adopted this same logic when it confronted an ordinance creating speech zones for literature distribution during a public festival. *Ascherl*, 2011 WL 4404145, at \*1-2. Though the city in *Ascherl* defended its ordinance because it allowed some expression in designated zones, the *Ascherl* Court rejected that argument and enjoined the ordinance because limiting expression to designated zones lacked narrow tailoring. *Id.* at \*3-5. *Accord Cuiello v. Expo*, S-11-2456 KJM EFB, 2013 WL 3894164, at \*10 (E.D. Cal. July 27, 2013) (enjoining restriction on literature distribution outside of speech zones during State Fair).

The similarities between this situation and *Ascherl* and *Saieg* are readily apparent. Thus, the logic and holding of *Ascherl* and *Saieg* squarely condemn Greenfield’s censorship as unconstitutional.

### DEMAND

I trust this information helps clarify the rights and responsibilities of the City. In summary, the First Amendment does not allow Greenfield to bar Lawrence’s desired expression on W. Layton Avenue in the Festival area during the Festival. Because Lawrence retains a strong desire to share his message at this year’s Festival and this Festival ends in a few days (Monday September 2, 2013), we demand that you notify us – no later than close of business Friday August 30, 2013 – that you will allow Lawrence and his friends to distribute Bibles and express their beliefs in the Festival area on W. Layton Avenue. If we do not hear from you before the specified deadline, we can only assume that the City approves of the ban on

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Lawrence's expression and that the City intends to continue its unconstitutional policies and practices for this year's Festival and for future Festivals. Under that scenario, we would have no choice but to take quick legal action to ensure the exercise of Lawrence's First Amendment rights.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jonathan Scruggs  
Legal Counsel