



May 29, 2012

VIA TELEFACSIMILE (913-895-5095) AND E-MAIL

Mr. Michael R. Santos, City Attorney
City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212-2866

RE: Goran Hunjak, Victory Soccer Camp

Dear Mr. Santos,

The Alliance Defense Fund (ADF) has been retained by Goran Hunjak to pursue legal claims arising from the City of Overland Park's unlawful denial of Mr. Hunjak's constitutional right to freely distribute religious literature in a traditional public forum.

By way of introduction, ADF is a not-for-profit, public interest law and educational group. Our organization exists to educate the public and the government about the constitutional rights of citizens, particularly in the context of the expression of religious sentiments. We render assistance to a significant number of people in situations similar to the one Mr. Hunjak now faces.

In the following pages, the particular facts of this matter are set forth. Following the fact statement is a discussion of relevant law. After reviewing this letter, you will need to take whatever steps are necessary to ensure that the City of Overland Park does not continue to violate Mr. Hunjak's constitutional rights in order to avoid a lawsuit.

I. Statement of Relevant Facts

Mr. Hunjak heads a non-profit called Victory Through Jesus Sports Ministry. Among other things, the Ministry sponsors Victory Soccer Camp, where kids are taught the fundamentals of soccer, as well as life skills based on biblical principles. The Blue Valley Recreational Complex is part of a public park built and owned by the City of Overland Park, and administered by a governmental agency called the Blue Valley Recreation Commission.

Mr. Hunjak's ministry has chosen the sidewalks outside of the Complex as one of its literature distribution sites due to the large number of people that attend soccer sporting events there. He has attempted to access the sidewalk outside the Complex on several occasions for the purpose of distributing literature informing people of his ministry's soccer camps. Mr. Hunjak and others from his ministry were threatened with arrest for distributing literature on these public sidewalks. Mr. Hunjak was told that the sidewalks adjoining the Complex are "private property."



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II. Statement of Relevant Law

A. The distribution of religious literature is protected speech under the First Amendment.

It is well settled that religious speech is protected by the First Amendment. *See, e.g., Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Widmar v. Vincent*, 454 U.S. 263, 269 (1981). The First Amendment's prohibition on governmental restrictions of free speech applies to State entities via the Fourteenth Amendment's protection of fundamental personal rights and liberties. *Lovell*, 303 U.S. at 450; *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940). To deny this fundamental axiom would be to destroy the very essence of free speech and religious freedom under the First Amendment.

The hand distribution of free religious literature in a public place is an "expressive activit[y] involving speech protected by the First Amendment." *United States v. Grace*, 461 U.S. 171, 176 (1983) (citing *Carey v. Brown*, 447 U.S. 455, 460 (1980)). Indeed, in *Lovell*, the United States Supreme Court quite clearly recognized the constitutional right to distribute leaflets and pamphlets:

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the *vital importance of protecting this essential liberty from every sort of infringement* need not be repeated.

Lovell, 303 U.S. at 452 (emphasis added)(citations omitted).

Accordingly, Mr. Hunjak and others from his ministry have a constitutional right to further their mission through the free distribution of literature.

B. Mr. Hunjak's constitutional right to distribute religious literature extends to the sidewalks outside the complex.

The First Amendment prohibits restrictions on speech activity such as literature distribution in traditional public fora such as public parks.

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public, and time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions.

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Hague v. C.I.O., 307 U.S. 496, 515 (1939). Publicly owned parks, like the one in which the Complex is located, are presumed to be traditional public forum property. *Grace*, 461 U.S. at 176. Even if areas of the park are leased to a private entity, that entity becomes a state actor. The United States Supreme Court, in *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), held that a private restaurant was a state actor as a result of its mutually beneficial and dependant relationship with a state owned parking garage. This relationship has been referred to as a symbiotic relationship. "Conduct that is formally 'private' may become...so impregnated with a governmental character as to become subject to the *constitutional limitations* placed upon state action." *Lebron v. National R.R. Passenger Corp.*, 811 F.Supp. 993, 996 (S.D.N.Y. 1993) (quoting *Evans v. Newton*, 382 U.S. 296, 299 (1966)) (emphasis added). These constitutional limitations include those found in the First Amendment. In *Lebron*, Amtrak claimed it was a private party and, thus, immune from the First Amendment. *Id.* The court, however, held that the state's relationship with Amtrak did cause the restrictions contained in the First Amendment to apply to Amtrak. *Id.* at 997.

DEMAND

It is imperative that this situation be corrected immediately to avoid unnecessary litigation in federal court. Please instruct any Overland Park employees or individuals leasing park property to discontinue their interference with Mr. Hunjak's right to engage in reasonable literature distribution in the areas of the Complex that are accessible by public sidewalk. As you know, the violation of an individual's constitutional rights, even for a moment, results in irreparable injury. *Elrod v. Burns*, 427 U.S. 347 (1976). Consequently, we would appreciate a response from you by the end of business on Friday, June 1, 2012, outlining your position regarding the matters referenced herein.

Please understand that we will advise Mr. Hunjak of his right to take immediate legal action against the City of Overland Park if his rights are not immediately restored.

Sincerely,



Erik Stanley,
Senior Legal Counsel



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www.telladf.org

To: Mr. Michael R. Santos
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DATE: May 29, 2012

Please see attached correspondence

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