CENTER FOR
RELIGIOUS
EXPRESSION

Clearing the path for Truth

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Chief Counsel

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Steve Carlyon Parks & Recreation Director 400 La Crosse St. La Crosse, WI 54601	Ronald Tischer **VIA Fax# 608-789-7250 and U.S. Mail** Chief of Police La Crosse Police Department 400 La Crosse St. La Crosse, WI 54601
Stephen F. Matty, Esq. **VIA Fax# 608-789-7390 and U.S. Mail** La Crosse City Attorney 400 La Crosse St. La Crosse, WI 54601	

Re: Violation of Free Speech at Riverside Park during Riverfest

Dear Director Carlyon, Chief Tischer and Mr. Matty:

Ryan Woodhouse contacted the Center for Religious Expression regarding his desire to distribute literature and talk to people at Riverside Park on the 4th of July while Riverfest is taking place in the park. During this year's Riverfest event, Woodhouse was threatened with criminal arrest for conducting this expressive activity in the public park.

A sergeant and another police officer with the La Crosse police department forced Woodhouse to stop his speech under the threat of arrest solely because Riverfest, Inc. did not want Woodhouse expressing his religious beliefs there. This stoppage plainly violated Woodhouse's constitutional right to free expression. We write on Woodhouse's behalf to avoid a similar constitutional violation from occurring during next year's event.

LEGAL ANALYSIS

THE FIRST AMENDMENT PROTECTS WOOHOUSE'S DESIRED SPEECH

Religious expression is speech and entitled to the same level of protection as other kinds of speech. *Capital Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995). 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, the distribution of literature constitutes protected speech. *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939); *Boos v. Barry*, 485 U.S. 312, 318 (1988). Woodhouse's desired speech is undoubtedly covered by the First Amendment.

WOODHOUSE HAS THE RIGHT TO FREELY EXPRESS HIMSELF IN A TRADITIONAL PUBLIC FORUM LIKE A PUBLIC PARK

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). The area where Woodhouse wants to speak – a public park - is unquestionably a traditional public forum. A traditional public forum is "an area, like a sidewalk or a public park, that has been traditionally used for expressive activity." *Air Line Pilots Ass'n Int'l v. Dep't of Aviation of Chicago*, 45 F.3d 1144, 1151 (7th Cir. 1995). The United States Supreme Court has consistently characterized such places as "quintessential" public fora for speech. *United States v. Grace*, 461 U.S. 171, 179 (1983). *See also Wells v. City and County of Denver*, 257 F.3d 1132, 1144 (10th Cir. 2001) ("Traditional public fora, such as public parks and sidewalks, are places that "by long tradition or by government fiat have been devoted to assembly and debate ....'") (emphasis added).

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 the City to regulate Woodhouse's speech on the public way is severely restricted. *Boos v. Barry*, 485 U.S. 312, 318 (1988). In order to meet this high standard, the City 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

Moreover, the City may not change the character of a traditional public forum by giving a permit to a private entity for a festival. 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). *See also Irish Subcommittee v. Rhode Island Heritage Com'n*, 646 F. Supp. 347, 353 (D.R.I. 1986) (government cannot change essence of public forum).

When public parks 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 this argument was flatly rejected by the Sixth Circuit in its ruling against Columbus:

> 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. Here, Parks attempted to exercise his First Amendment free speech rights at an arts festival open to all that was held on the streets of downtown Columbus. Under these circumstances, the streets remained a traditional public forum notwithstanding the special permit that was issued to the Arts Council.

Id. at 652. *See also 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). Riverside Park remains a public park and a traditional public forum at all times.

BAN ON WOODHOUSE IS NOT NARROWLY TAILORED

Because Woodhouse attempted to express his 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 action by La Crosse police department cannot satisfy this test because they effectively ban him from any sort of expression in a traditional public forum. *See, e.g., Schneider v. New Jersey,* 308 U.S. 147, 157-64 (1939) (invalidating ban on literature distribution occurring on public sidewalks); *Lederman v. United States,* 291 F.3d 36, 44-46 (D.C.Cir. 2002) (invaliding ban on "demonstrations" including "speechmaking" on sidewalks around capital

building); *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).

La Crosse cannot rely on the festival context to justify its ban. Courts have unanimously invalidated bans on expression outside of booth spaces during festivals so long as those festivals remained free and opened to the public. *See, e.g., Bays v. City of Fairborn*, 668 F.3d 814, 822-25 (6th Cir. 2012) (enjoining ban on literature distribution, sign display, and speaking outside of booth spaces during festival); *Saieg v. City of Dearborn*, 641 F.3d 727, 737-41 (6th Cir. 2011) (invaliding ban on literature distribution on public sidewalks open to public, even though literature distribution allowed at festival booths); *Teesdale v. City of Chicago*, No. 09 C 4046, 2011 WL 2143027 at *6, 10 (N.D.Ill. May 26, 2011) (enjoining ban on literature distribution on public streets in festival free and open to the public).

RESTRICTIONS ON WOOHOUSE'S SPEECH ARE NOT NECESSARY TO PRESERVE THE RIGHTS OF FESTIVAL PARTICIPANTS

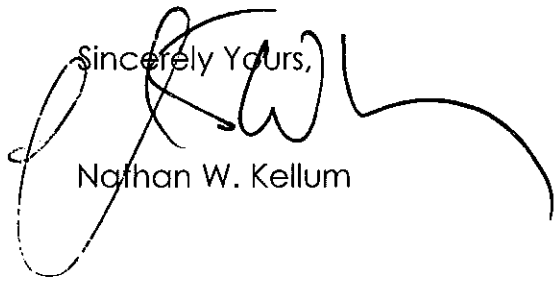
The City of La Crosse might be concerned about the free speech rights of those participating in Riverfest. But this concern cannot justify the suppression of Woodhouse's free speech rights. Woodhouse does not desire to participate in the Festival. He does not desire to obtain a booth or participate in any Festival activities. Thus, Woodhouse presents his own, clearly distinct message and in no way infringes on the speech of festival participants. *See Parks*, 395 F.3d at 651; *Gathright*, 439 F.3d at 577; *Wickersham v. City of Columbia*. 481 F.3d 591, 600-01 (8th Cir. 2007); *Mahoney v. Babbitt*, 105 F.3d 1452, 1456 (D.C. Cir. 1997).

DEMAND

We trust this information helps clarify the responsibilities of the City of La Crosse. Because Woodhouse retains a strong desire to share his message at next year's Riverfest scheduled for July of 2013, as well as future festivals, we demand that you notify us in writing – no later than November 15, 2012 – that you will allow Woodhouse to enter into Riverside Park during Riverfest and distribute literature and dialogue during the time of the Festival.

If we do not hear from you in writing before the specified deadline, we can only assume that the City of La Crosse approves of the ban on Woodhouse's expression and that the City intends to continue its unconstitutional policies and practices by banning Woodhouse's expression in the future. Under that scenario, Woodhouse would have no recourse but to take legal action.

Sincerely Yours,



Nathan W. Kellum

NWK/
cc: Ryan Woodhouse