



Ms. Arnita Dula
City Attorney
P.O. Box 28603
Hickory, North Carolina 28603
Sent via facsimile and U.S. Mail

Re: Unconstitutional Restriction of Free Speech in Public Forum

Dear Ms. Dula,

Jesse and Matthew Boyd have retained the Alliance Defense Fund (ADF) in connection with the Hickory police's decision to restrict their speech in violation of clearly established federal law. By way of introduction, ADF is a non-profit legal and educational organization which exists to educate the public and the government about the right to freedom of speech, particularly in the context of the expression of religious sentiments. Where necessary, we litigate to secure our clients' constitutional rights.

RELEVANT FACTS

My understanding of the situation is as follows. The Hickory Jaycees sponsor a weekly concert series during the summer, called the Hickory Alive Festival. The Jaycees secure a permit from the City of Hickory to hold the Festival in Union Square Common. The Festival is open to the public, free of charge, and provides attendees with a wide assortment of food, music, and other entertainment.

The Boyds are Christians, and are compelled by their faith to communicate their religious beliefs to others. To this end, they attended the Hickory Alive Festival on June 27, 2008 with two colleagues, Paul Langford and Kent Blalock, to peacefully hand out religious literature and share their religious beliefs with others. Festival representatives objected, claiming that such speech is not permitted at the Festival. The representatives summoned Hickory police, who ultimately arrested the Boyds and charged them with trespassing.

Following communications with the Boyds' previous counsel, the criminal charges against the Boyds were dropped. However, my clients have not received any assurance that their records have been expunged. Moreover, the City issued a press release and several City officials made statements to the media suggesting that the Hickory police acted properly. These statements have a significant chilling effect. They strongly suggest that my clients, and others who wish to engage in expressive activities in traditional public forums, will be subject to arrest for engaging in similar speech in the future.

My clients would like to peacefully share their religious faith at future Hickory Alive Festivals and other events at Union Square Common. But they are deterred from doing so because of this incident and fear of future arrest.

RELEVANT LAW

The U.S. Court of Appeals for the Sixth Circuit considered a virtually identical situation in *Parks v. City of Columbus*.¹ Every year, the City of Columbus hosts an art festival, where it blocks off vehicular traffic from a particular street and allows the festival to set up vendor booths along the road.² The art festival is free and open to the public. Mr. Parks wanted to attend and share his faith with others by preaching, displaying a sign, and distributing religious literature.³ However, the festival organizers did not want him there, and an off-duty police officer forced him to move outside of the festival's area under threat of arrest.⁴ The Sixth Circuit held that this was a violation of Mr. Parks' First Amendment rights.⁵

The Sixth Circuit's analysis in *Parks* is equally applicable to the present situation. First, it is indisputable that my clients' speech is constitutionally protected. The Supreme Court has repeatedly held that "the oral and written dissemination of . . . religious views and doctrines is protected by the First Amendment."⁶ It is equally indisputable that public streets and sidewalks, like those in the Union Square Common where my clients were speaking, are traditional public forums.⁷

The fact that the Union Square Common was also being used for the Hickory Alive Festival does not change its status as a traditional public forum. The Festival is not a private event; it is open to the general public at no cost. There is nothing restricting the public's access to the area. Thus, as in *Parks*, "[t]he City cannot . . . claim that one's constitutionally protected rights disappear because a private party is hosting an event that remained free and open to the public."⁸

Because this is a traditional public forum, "the rights of the state to limit expressive activity are sharply circumscribed."⁹ Yet the City cannot articulate any legitimate, much less compelling, interest in prohibiting the Boyds from expressing their religious viewpoint at the Festival. They were acting peacefully and in no way were disrupting the Festival. And neither the police nor the Festival organizers claimed otherwise. As such, Hickory police violated their constitutional rights and must take corrective action.

¹ 395 F.3d 643 (6th Cir. 2005). ADF represented Mr. Parks in this matter.

² *Id.* at 645.

³ *Id.* at 647.

⁴ *Id.* at 646.

⁵ *Id.* at 647.

⁶ *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981); *see also Parks*, 395 F.3d at 647.

⁷ *See, e.g., Frisby v. Schultz*, 487 U.S. 474, 481 (1988) (explaining that "public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum"); *Parks*, 395 F.3d at 648.

⁸ *Parks*, 395 F.3d at 652.

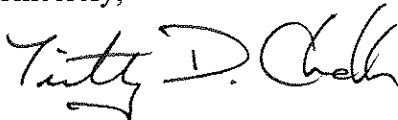
⁹ *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983).

DEMAND

The Boyds' right to engage in expressive activities in traditional public forums like the Union Square Common is supported by clearly established federal law. The violation of an individual's First Amendment rights, even for a moment, results in irreparable injury.¹⁰ Thus, it is imperative that my clients be accorded their First Amendment rights immediately. As such, please notify my office in writing by the close of business on **Wednesday, September 10, 2008** that (1) the City will take corrective action to ensure that the Boyds and others wishing to peacefully engage in expressive activities at Union Square Common and other traditional public forums in Hickory will be fully protected; and (2) that my clients' records have been expunged with regard to the June 27, 2008 incident.

If I do not receive such assurance from the City by that date, I will advise my clients of their right to seek redress in federal court, including all relevant costs and attorneys' fees. Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,



Timothy D. Chandler
Alliance Defense Fund

cc: J. Denice von Gnechten, North Carolina allied attorney
Jesse and Matthew Boyd

¹⁰ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).