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June 25, 2007

VIA Facsimile, E-mail and U.S. Mail

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RE: "Free Speech Zones"/Ordinance Respecting Enforcement of Event Permits

Dear Sirs/Madams:

From a telephone conversation with City Attorney John Wolfe this morning, we understand that city officials are meeting today to re-visit the ordinance that the City of St. Petersburg recently adopted mandating the so-called "free speech zones" at the upcoming St. Pete Pride event on June 30, 2007. This letter calls attention to ways in which the ACLU considers the current ordinance unconstitutionally overbroad on its face – and even worse as applied to the St. Pete Pride permit.

City Ordinance No. 833-G allows the City to create ad hoc prior restraints of free speech with every permit. It then criminalizes anyone restricting those limits by deeming a violation of the permit a violation of the St. Petersburg City Code, then authorizing the police to arrest individuals for violating the terms of the permit. *Ord. # 833-G § 2.13* (amending City Code § 3-7(e)b.). The City then applied the Ordinance to the St. Pete Pride event by setting "Additional Conditions of Permit" that limit speech for not only the opponents but also the event organizers: Within the "street closure area," there can be no hand held signs, hand held banners, or bullhorns unless within a "designated area." Further, St. Pete Pride must designate one area within the "permit closure area" where (a) the organizers can use banners, signs and amplified sound, and a separate area where (b)

“those wishing to exercise their first amendment right to free speech” can use amplified sound and banners.

A review of the DVD of the City Council meeting where this ordinance was adopted shows that the intent of the ordinance was clearly motivated by hostility toward one particular type of speech – that of persons moved by their religious beliefs to speak out against the message of tolerance and equality promoted by the organizers of St. Pete Pride. The City cannot regulate speech based on the viewpoint expressed. Further, because the persons opposing the St. Pete Pride event feel compelled by their religion to speak, the ordinance as applied may violate not only the speakers’ First Amendment free speech rights; it could also violate their First Amendment rights of Free Exercise of Religion.

The permit is unclear as to its effect on free speech rights along the public sidewalks and thoroughfares along the parade route. While the “street closure area” the organizers request is limited to Central Avenue between 21st Street and 28th Street, streets will also be closed from 32nd Street leading to the Central Avenue area for the parade. Will protesters be banned from carrying signs or banners along the parade route? Will marchers in the parade itself, which promenades through the Central Avenue closed area, be forced to drop their signs and banners as they cross 28th Street into the street closure area?

These are not mere rhetorical questions. Last year, protesters were very vocal along the parade assembly area and parade route, and there is no reason to anticipate they would not wish to do the same this year. Will the police arrest the protesters if they attempt to speak along the parade route? And last year, the Pinellas ACLU of Florida chapter (“ACLU”), which marched in the parade, handed out numerous hand-held signs to people all along the parade route, informing everyone of the ACLU’s LGBT project and support for St. Pete Pride. This year, the ACLU wishes to do the same, but is now concerned that if it handed out the signs, its members and supporters could be arrested. Similarly, the St. Petersburg Meeting of the Religious Society of Friends (Quakers) has made a beautiful hand-painted banner to carry in the parade to carry witness to its religious testimony of equality. Will marchers be forced to drop their banner once they cross into the street closure area? If any of the above suppressions of speech occur this Saturday, the City will have violated the free speech rights guaranteed by the First Amendment.

Further, by requiring St. Pete Pride to erect “free speech zones” within its street closure area,¹ the City violates the First Amendment rights of the event organizers. As the Supreme Court noted in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group*, 515 U.S. 557 (1995), which allowed St. Patrick’s Day parade organizers to bar a gay group from marching in its event, organizing a parade is in itself free speech. And the

¹ It is even more egregious that, while St. Pete Pride can charge vendors and community groups a fee to use space within the street closure area, it must allow its opponents to use space free of charge.

St. Petersburg Mayor,
City Counsel and Chief of Police
June 25, 2007

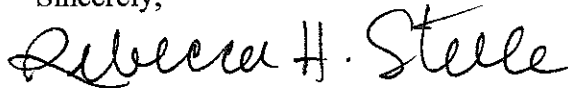
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freedom to promote a message includes the concomitant right to bar a contrary message. *Id.* at 573 (“[A]ll speech inherently involves choices of what to say and what to leave unsaid.”) (emphasis in original; quotes omitted). Within the area of Central Avenue between 28th and 21st streets, the organizers of St. Pete Pride have the First Amendment right to promote a message of tolerance and equality. This necessarily includes the right to exclude a message that condemns being gay, lesbian, bisexual, or transgender. What will happen in other future events? Would a veterans’ group organizing a patriotic event be required to allow anti-war protesters to speak within its permitted area? Would Circus McGirkus be required to allow military recruiters a space in its event, which traditionally carries an anti-war, anti-violence message? If a church group organizes an event, would it be forced to allow those who hate that religion to speak within the permitted area? While organizers could certainly allow free speech arenas of their own will (and it would be a good example of the “free marketplace of ideas” in action), the Supreme Court has ruled that the government cannot force them to do so.

In short, the City of St. Petersburg should drop the notion of “free speech zones.” The entire City should be a free speech zone. The City should clarify that event organizers have the right to control the message allowed within the permitted area (unless, of course, the organizers attempt to insulate themselves from all free speech by attempting to designate space merely to keep protesters far away from the event itself, even if the permitted area is not actually being used for the event.). So within the Central Avenue area from 28th to 21st street, St. Pete Pride should be allowed to promote its message, and only its message. But outside that narrow area, protesters using the traditional public fora of sidewalks and public spaces, including those along the parade route, should be allowed to speak freely. And once St. Pete Pride has granted permission for persons and groups to march in the parade, those marching should be allowed to carry signs all along the parade route, including the “street closure area.”

Please feel free to contact me or our regional staff attorney, Zeina Salam, if we can be of any further assistance.

Sincerely,



Rebecca H. Steele

cc: John Wolfe, City Attorney (via fax (727) 893-7404)
ACLU of Florida Pinellas Chapter Board members