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July 22, 2016

ATTENTION: URGENT LEGAL MATTER

Central Region Office
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717-238-2258 T
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Marc J. Manfre, Director
Delaware County Parks &
Recreation Dept.
1671 N. Providence Rd.
Upper Providence, PA 19063
Fax: 610-891-3989

Samuel S. Ziviello, Chief
Delaware County Park Police
Toal Building
201 W. Front Street
Media, PA 19063
Fax: 610-891-0569

Western Region Office
247 Fort Pitt Blvd
Pittsburgh, PA 15222
412-681-7736 T
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Michael L. Maddren, Esq.
Delaware County Solicitor
201 W. Front St. 2nd Floor
Media, PA 19063
Fax: 610-891-4816

Re: Illegal Limitation of Political Activity in Rose Tree Park

Dear Director Manfre, Solicitor Maddren and Chief Ziviello:

We represent Dale Kerns and others who were ejected from Rose Tree Park on July 14 and 16 at the direction of Parks Director Manfre because they were soliciting signatures for candidates for political office. Although our clients have been allowed back to the Park since then, they are still subjected to unconstitutional limits on their use of the Park. Specifically, they have been told they can solicit signatures only in the parking lot, that they cannot wear or carry political signage (including t-shirts) and that they cannot distribute literature to people willing to accept it. Apparently these restrictions flow from County Park Ord. #1, Section E, which we could not find online, but which is referenced in a memo from Chief Ziviello to his officers, reminding them to stop Park visitors from engaging in these activities.

We write to put the County on notice that our clients will not abide by these unconstitutional restrictions when they return to the Park this weekend and on future weekends. If they are prevented from collecting signatures throughout the Park (apart from during the scheduled concert events), distributing literature, or wearing or carrying political messages, or are retaliated against in any way, we will bring suit against the County and all of the individuals involved for violation of our clients' First Amendment rights.

In “public places historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, the government’s ability to permissibly restrict expressive conduct is extremely limited” *United States v. Grace*, 461 U.S. 171, 177 (1983). The government, of course, may impose reasonable restrictions on the time, place, or manner of speech in a traditional public forum. But the County must show that the restrictions “[a] are justified without reference to the content of the speech, [b] that they are narrowly tailored to serve a significant governmental interest, and [c] that they leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

The ban on distributing political literature, or carrying political signs, or any other restriction on political speech violates this standard. The United States Supreme Court recently emphasized—and the Court of Appeals for the Third Circuit has reiterated—that regulations of speech that “distinguish[] between ideological, political, and directional signs [are] an impermissible content-based restriction on speech. *Bruni v. City of Pittsburgh*, No. 15-1755, 2016 WL 3083776, at *7 (3d Cir. June 1, 2016) (quoting *Reed v. Town of Gilbert*, — U.S. —, 135 S. Ct. 2218, 2226 (2015)). Under the Supreme Court’s decision in *Reed*, the County’s allowance of non-political events in the parks while refusing to allow political activities is content discrimination based on the purpose of the speech. Content regulation is presumptively invalid. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). A content-based exclusion is not enforceable unless it survives the strictest scrutiny: it must be both necessary to serve a compelling state interest and narrowly drawn to achieve that end. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983); *Kreimer v. Bureau of Police*, 958 F.2d 1242, 1261 (3d Cir. 1992). There simply is no legitimate government interest in silencing political speech on public property. See *Bruni*, 2016 WL 3083776, at *2 (“The speech at issue is core political speech entitled to the maximum protection afforded by the First Amendment”).¹

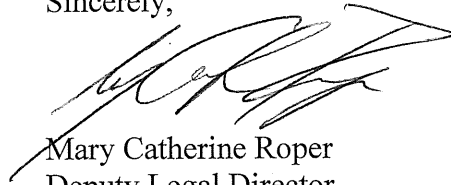
The memo circulated by Chief Ziviello states that County-approved literature can be distributed in parks. That suggests that the County administration decides on an ad hoc basis what speech will and will not be allowed in the park. That is, itself, a violation of the First Amendment. Decisions to allow or disallow speech must be based on articulated, defined, and objective standards and the discretion of the government official making the decision must be limited. See, e.g., *Thomas v. Chicago Park District*, 534 U.S. 316, 318 (2002) (permit scheme must contain adequate standards to guide the licensing official’s decision and provide for effective judicial review); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-51 (1969) (“A law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.”).

¹ It should be noted that, even if the County prohibited *all* distribution of literature, signs, and solicitation of signatures, without regard to message, those prohibitions simply could not stand in a traditional public forum. See *Grace*, 461 U.S. at 180-84 (holding that content neutral ban on leafleting, soliciting and political picketing was not a reasonable time, place and manner regulation).

I would appreciate confirmation in writing that Delaware County will not interfere with our clients' First Amendment protected activity this weekend, or at any time in the future. Regardless whether we receive that assurance, however, we will instruct our clients that they should exercise their rights and we will respond with legal action if they are not permitted to do so.

Please feel free to contact me with any questions. You can reach me at (215) 592-1513 ext. 116. Thank you in advance for your anticipated cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Catherine Roper', written over a horizontal line.

Mary Catherine Roper
Deputy Legal Director