



Mary Catherine Roper
Staff Attorney
Eastern Regional Office
mroper@aclupa.org
Ext. 116

Eastern Region Office
P. O. Box 40008
Philadelphia, PA 19106
215-592-1513 T
215-592-1343 F

July 30, 2010

By Facsimile to 610-865-7205

Central Region Office
P. O. Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Stuart J. Bedics, Commissioner of Police
City of Bethlehem
10 East Church Street
Bethlehem, PA 18018

Western Region Office
313 Atwood St.
Pittsburgh, PA 15213
412-681-7736 T
412-681-8707 F

John F. Spirk, Jr., Esq., Solicitor
City of Bethlehem
10 East Church Street
Bethlehem, PA 18018

RE: Political activity at Musikfest

Dear Commissioner Bedics and Solicitor Spirk:

The American Civil Liberties Union of Pennsylvania ("ACLU") has received several complaints about activists being prevented from engaging in protest or public education activities at Musikfest. We are writing in advance of this year's festival to request that the City respect the right of activists to express themselves on public streets and sidewalks, including those within the Musikfest area. We understand that last year a "Free Speech Platz" was created for the use of protesters; because Musikfest occurs on public property that remains open to the public, protesters cannot be restricted to a "free speech zone". As the Third Circuit Court of Appeals has recently held, the existence of a permit to use public property does not allow the permit holder (or the police) to restrict free speech activities that do not obstruct the permitted activity. If we receive complaints that activists are being told they cannot engage in non-obstructive speech in non-ticketed areas of Musikfest, we will immediately seek relief from a federal judge.

Parks and sidewalks are known as traditional public forums: when expressive activities, like leafleting, picketing and signature gathering, take place in these public forums, the "government's ability to permissibly restrict expressive conduct is extremely limited...." *United States v. Grace*, 461 U.S. 171, 177 (1983). This is true even when the street may be "rented" out to a permit holder, such as Musikfest and ArtsQuest. The recent Third Circuit decision makes the point:

In *Hague v. C.I.O.*, 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), Justice Owen J. Roberts wrote, streets and parks “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” That principle has been reiterated in case after case, *see, e.g., Frisby v. Schultz*, 487 U.S. 474, 481, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988); *Perry*, 460 U.S. at 45, 103 S.Ct. 948; *United States v. Grace*, 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983), and neither the grant of a permit nor anything in *Hurley* alters that still viable principle.... It follows that the District Court erred in extending *Hurley* to allow Philly Pride to exclude Appellants from the public streets occupied by OutFest.

Startzell v. City of Philadelphia, 533 F.3d 183, 195-96 (3d Cir. 2008). In *Startzell*, a community organization had obtained a permit and blocked off vehicular traffic on several blocks in Center City Philadelphia for “OutFest”, a celebration of gay culture. The OutFest organizers sought to exclude anti-gay protesters from the event, but the police refused, only arresting the protesters when they persisted in blocking access to vendors or using bullhorns near stages where there were performances going on. The court held that was the proper approach: although those streets were closed to vehicular traffic for OutFest, they were not closed to pedestrians, whether the pedestrians wished to attend OutFest or visit businesses located within the festival or simply walk through. Therefore, the streets and sidewalks retained their character as open public spaces.

Musikfest, like OutFest in Philadelphia, occurs on the streets and sidewalks of Bethlehem, which remain open for general pedestrian traffic and existing businesses and therefore remain a traditional public forum where First Amendment protections are strongest. So long as the protesters and activists are not deliberately interfering with Musikfest events they must be allowed to continue their activities. Stopping and talking to people is not, and cannot be, considered interference, nor is handing out leaflets, collecting signatures, holding signs that do not block events or vendors, or audio/video taping of things other than performances (we note that the Musikfest website prohibits such recording, but that prohibition cannot be applied to consensual interviews with people standing on public streets or sidewalks). These activities must be permitted even where they target or criticize Musikfest attractions or vendors. We have also been told that in past years activists have been prohibited from holding a banner over the side of the Hill to Hill bridge so that it is visible from the festival area. As that bridge is closed to vehicular traffic during the festival and the activists will not leave the sign unattended, there is no valid reason to forbid them from expressing their political views in this way.

If you disagree with this reading of the law or think some other principle of law allows the City to limit our clients’ expression, I ask that you respond to this letter or call us to discuss the issue. We would rather discuss this in advance than in a

courtroom. Otherwise, we ask that you instruct the Bethlehem police officers that the sorts of restrictions placed on protesters in the past cannot continue, and that everyone has the right to use the public streets.

If you would like to discuss this matter, or a particular protest activity, you can contact Mary Catherine Roper at 215-592-1513 ext 116 through August 4, and after that Marieke Tuthill at ext. 113. We appreciate your anticipated cooperation.

Very truly yours,



Mary Catherine Roper

cc: Mr. Jeff Parks, President, ArtsQuest (by facsimile to 610-332-1310)
Witold Walczak, Legal Director, ACLU of PA (by email)