



March 6, 2009

Al Coby
City Manager, City of Pensacola
180 Governmental Center, 7th Floor
P.O. Box 12910
Pensacola, FL 32521

VIA Facsimile (850-435-1611) and UPS (Guaranteed for Next Day Delivery)

RE: Unconstitutional Closing of Plaza Ferdinand VII to Church Groups

Dear City Manager Coby,

Our client, Reverend Nathan Monk of St. Faustina Old Catholic Church (the "Church"), has been informed by Pensacola Police officers that his Church must cease holding picnics at Plaza Ferdinand VII because you have determined that this park is a "non-event" park. This determination directly violates the Church's First Amendment right to free speech and its Fourteenth Amendment rights to equal protection under the law. Accordingly, we are writing you to urge you to rescind this policy by Monday, March 16, to avoid requiring the Church to litigate to defend its rights.

By way of introduction, the Alliance Defense Fund ("ADF") is a non-profit legal and educational organization that seeks to educate government officials and others on the subject of constitutional rights, particularly under the First Amendment. When necessary, we do proceed to litigation to protect First Amendment rights.

RELEVANT FACTS

Plaza Ferdinand VII (the "Park") has been a National Historic Location since 1966 and is located in the heart of the historic district of Pensacola. It has been a public park since 1764, when it was originally designed as a public square. The Park is open to the public and has been used to host several events in recent months, including a reception for the King of Spain on February 19th that attracted over 2000 people. The Park was also recently used by vendors during both the New Years and Christmas holidays. Church groups regularly meet there during the summer for prayer meetings.

For about ten weeks, the Church has been meeting at the Park on Thursday nights to hold a church picnic. The Church has made these picnics open to the public, allowing the community to participate in the food and fellowship without any charge. The purpose of the picnic is simply to provide an informal opportunity for the Church to fellowship with its members and to minister to the community. The Church has made a point of respecting the Park and has a team of Church members clean up not only the trash from the picnic but also any other nearby trash in the park. Also, the Church has worked to ensure that the picnics do not generate too much noise or otherwise disrupt the Park. Pensacola Police Officer Jay, who delivered the city's command to the Church that they can no longer meet at the Park, specifically noted that no complaints have been made about litter or noise from the Church's picnics.

On or about Thursday, February 26th, Officer Jay approached Rev. Monk and told him that the city had determined that the Park is a "non-event" park and that, accordingly, the Church would no longer be able to have picnics there. Officer Jay specifically cited you, Mr. Coby, as the source of this determination. Officer Jay said that the Church could meet at the Park for a couple more weeks, in order to inform community members that these would be the last picnics at the Park, but that the Church would no longer be able to meet at the Park afterwards.

There are no ordinances in the Pensacola Code which declare either the Park or any other city park to be "non-event" parks. Officer Jay did not explain what an "event" was and how that differed from other informal public uses of the Park.

RELEVANT LAW

Public places are generally categorized into three categories for First Amendment purposes: traditional public fora, limited public fora, and nonpublic fora. The traditional public forum is one that by long tradition or by government fiat has been devoted to public assembly and debate. *Perry Educ. Assn v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). Public parks are indisputably traditional public fora. *Id.*; *Cornelius v. NAACP Legal Defense*, 473 U.S. 788 (1985). "[T]ime out of mind," public parks "have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939). "Speech finds its greatest protection in traditional public fora, and government may not alter their public status without completely changing the fora's use, e.g., converting a public park to an office building." *Snowden v. Town of Bay Harbor Islands, FL*, 358 F.Supp.2d 1178, 1191 (S.D. Fla 2004). Any regulations government puts on the expressive use of these forums must be based on a compelling interest and must be narrowly tailored to that interest. *Perry Educ. Ass'n*, 460 U.S. 37 at 45.

The Park has been a public park since before the founding of the United States and has kept its public character throughout; it is clearly a traditional public forum. Pensacola has done

nothing to alter the Park's essentially public nature, meaning that it cannot now attempt to selectively remove public access to the park. Further, because the Park is regularly used for other events—events which are much larger and more burdensome on the use of the park—no compelling interest can be said to support the city's attempt to prevent the Church from holding small, unobtrusive picnics there. Thus, the city's action against the Church—action which has no support in the Pensacola Code—is a violation of the Church's First Amendment rights.

Further, since the Park is regularly and demonstrably used for events that are open to the public, the city's attempt to shut out the Church is a violation of the Fourteenth Amendment's guarantee of equal protection under law. The Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). Since the Park is both generally open to the public, including informal public gatherings like the Church's, and is open to large-scale events on a regular basis, the Church is being discriminated against by the city's policy. Accordingly, the Church's Fourteenth Amendment right to equal protection is being violated.

CONCLUSION

Pensacola's attempt to keep the Church from using a public park is, as we have explained it above, clearly unconstitutional. We hope that Pensacola will recognize this problem and fix it immediately to avoid any further violation of the Church's rights. The Church desires to continue meeting at the Park and looks forward to a voluntary change in Pensacola's policy for use of the Park. However, if Pensacola refuses to change its policy by 5:00 PM, EST, on Wednesday, March 18, ADF will commence litigation to protect the Church's First and Fourteenth Amendment rights.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Daniel Blomberg

Litigation Counsel

ALLIANCE DEFENSE FUND

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