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October 31, 2019

BY ELECTRONIC MAIL

Mark Kelly, Commissioner
Chicago Department of Cultural Affairs and Special Events
78 E. Washington St., 4th Floor
Chicago, IL 60602
Mark.kelly@cityofchicago.org

Re: Unconstitutional Regulation of Millennium Park

Dear Mr. Kelly:

I write regarding the conduct of security personnel at Refuse Fascism's October 26, 2019 protest in Millennium Park (the "Park"). Based on witness accounts, Park security made unconstitutional demands of protesters, some of which were based on unconstitutional provisions of the August 26, 2019 Millennium Park Rules (the "Rules") promulgated by the Department of Cultural Affairs and Special Events (DCASE).¹ I ask for your assurances that such restrictions will not be imposed at future protests, including Refuse Fascism's demonstrations planned for the next three Saturdays.

Public parks are traditional public forums that "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." *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983) (quoting *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939)). In such places, the government's authority to restrict speech is limited to "regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry*, 460 U.S. at 45.

On October 26, Park security officers went well beyond the government's constitutional authority to regulate speech in a public park. The relevant Rules, to the extent they apply, are also unconstitutional.

¹ This letter addresses constitutional issues that arose on October 26, and is by no means an exhaustive catalog of the ordinances and Rules that violate the constitutional rights of speakers in Millennium Park.

The October 26 Protest

Protesters arrived at the Wrigley Square section of Millennium Park at around noon on October 26. It is my understanding that shortly thereafter, two Park security staff arrived and told the protesters' legal observer that the Rules prohibited protesters from holding signs or banners, raising a canopy, or distributing leaflets. The protesters complied, leaning their signs against Park walls and statuary. Later, a Park security supervisor, Ricardo Knight, arrived and reiterated these restrictions, as did another supervisor, Mr. Walls.

It is my understanding that around 1:15 p.m., protesters began their rally, and speakers came to the front one by one to use a microphone connected to a small sound system. Without the microphone, most attendees would not have been able to hear the speakers. The two Park security officers returned and told the protesters that sound amplification was prohibited, and that this included drummers at the event. The drummers moved to the sidewalk, but speakers continued using the microphone. Mr. Knight and Mr. Walls returned, repeated the warning about sound amplification, and threatened to call the police. Eventually, a police officer arrived and told the legal observer that if the protesters did not turn off the sound in five minutes, he would issue a ticket. He relented, however, after the legal observer told him that the group would be leaving the Park shortly.

Ban on Holding Signs or Banners and Leafletting

It is not clear whether the Rules actually prohibit leafletting or holding signs or banners at a protest on Wrigley Square. Rule M.2 prohibits banners, handbills, and flyers at "Millennium Park events." The Rules do not define "event," but most of Rule M seems directed at to City-sponsored events and "special events" as defined in City Code Section 10-8-335. The Rules prohibit signs only at performances at the Jay Pritzker Pavilion and the Great Lawn, "[s]o as not to obstruct people's views." Rule N.2. And the Rules expressly *permit* leafletting in Wrigley Square. Rule P.3.

In any case, Park security staff violated the First Amendment when they told protesters not to hold signs or banners or to distribute leaflets, and if the Rules permitted or required them to do so, the Rules are unconstitutional. Raised banners and signs are a critical means—for which there is no adequate replacement—by which protesters communicate their message to each other and to outsiders. Although DCASE has a legitimate interest in ensuring unobstructed views and unimpeded pedestrian traffic at concerts and similar events, the same cannot be said of a protest. Even if the government had a discernable interest in prohibiting protesters from holding signs or banners, an absolute ban—without consideration of the signs' size, construction materials, or other relevant attributes—is not a narrowly tailored regulation.

Likewise, the government has no legitimate interest in prohibiting leafletting in a public park. Indeed, the Supreme Court has held that the First Amendment protects leafletting in an airport, which is *not* a public forum. *Lee v. Int'l Soc. for Krishna Consciousness, Inc.*, 505 U.S. 830 (1992). In a traditional public forum like the Park, a leafletting ban is wholly out of bounds.

Ban on Amplified Sound

Rule B.3 reads: “Park visitors are prohibited from using any sound-emitting devices which are clearly audible to others at a distance of over ten feet.” As a practical matter, this amounts to an absolute ban on microphones, bullhorns, or other devices that amplify the human voice.

Such a ban is a tremendous burden on free speech. As early as 1948, the Supreme Court observed that “[l]oud-speakers are today indispensable instruments of effective public speech.” *Saia v. People of State of New York*, 334 U.S. 558, 561 (1948). Without sound amplification, speakers cannot make themselves heard to a crowd of any size, especially in an urban park at a busy downtown intersection. The government may not prohibit such an essential conduit of free speech in a public park. The government may impose volume limits, but those limits must be reasonable and take into account the setting and the uses of the park. For this reason, a federal court of appeals struck down a similar ban in Lafayette Park:

Lafayette Park in Washington, D.C. has become a primary assembly point for First Amendment activity aimed at influencing national policies. Facing Pennsylvania Avenue and located directly across the street from the White House, it is exposed to every form of urban commotion—passing traffic, bustling tourists, blaring radios, performing street musicians, visiting schoolchildren. By no reasonable measure does Lafayette Park display the characteristics of a setting in which the government may lay claim to a legitimate interest in maintaining tranquility.

United States v. Doe, 968 F.2d 86, 89 (D.C. Cir. 1992). Aside from the reference to the White House, the court could be talking about Millennium Park.

In light of these serious First Amendment violations, please provide me with your written assurances that protesters in Wrigley Square will be allowed to use amplified sound and to hold signs and banners without interference from Park security or other DCASE personnel. Since the next Refuse Fascism demonstration is this Saturday, please respond by Friday, November 1.

Should you wish to discuss this matter, please do not hesitate to contact me at rglenberg@aclu-il.org or 312-201-9740 ext. 316. Thank you for your attention to this matter.

Sincerely,



Rebecca K. Glenberg
Senior Staff Attorney