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To: Dee Williams, Revolution Club
From: Rebecca Glenberg, Senior Staff Attorney, ACLU of Illinois
Date: 6/12/2019

Re: First Amendment Right to Free Speech in Chicago Streets, Sidewalks, and Parks during Parades, Festivals, and Other Permitted Events.

I. Introduction

Based on the information you have provided, it is our understanding that the Revolution Club regularly communicates its message at to persons attending permitted events in public streets, sidewalks, and parks, and that Chicago Police Department officers have repeatedly arrested or threatened to arrest the Club's members for doing so. Among other things, you have told us that police have arrested or threatened to arrest your members for using sound amplification, even when the pertinent ordinance allows them to do so.

The Revolution Club has asked the ACLU of Illinois for a legal opinion on the right to free speech in or adjacent to a permitted event, open to the public, on City property, including the upcoming Puerto Rican People's Parade.

II. Analysis

A. Public Streets, Sidewalks, and Parks are Traditional Public Forums, Even when a Private Entity is Using them for an Event Pursuant to a Permit.

The public streets, sidewalks are traditional public forums, where "government entities are strictly limited in their ability to regulate private speech." *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). The government may not impose content-based restrictions on speech in a public forum, but it may impose reasonable time, place, and manner restrictions, if those restrictions are "narrowly tailored to serve a significant governmental interest." *McCullen v. Coakley*, 573 U.S. 464, 477 (2014).

As the Seventh Circuit has noted, "The city streets are a traditional public forum, and their character as a public forum is retained even though they are used for a public festival sponsored by a private entity." *Teesdale v. City of Chicago*, 690 F.3d 829, 834 (7th Cir. 2012). *See also*, *Parks v. City of Columbus*, 395 F.3d 643, 652 (6th Cir. 2005) ("the streets remained a traditional public forum notwithstanding the special permit that was issued to the [festival sponsor].")

B. Rights of "Outsiders" to Speak in a Public Forum when a Permitted Event is Underway

As noted above, the government may not restrict speech based on its content in a public forum absent a compelling government interest to do so. The government may, however, impose reasonable time, place, and manner restrictions that are narrowly tailored to serve a significant interest. These basic First Amendment standards apply even when the speaker is not an official part of an event.

1. Content-Based Regulation

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015). Courts have repeatedly held that the government may not restrict the speech of attendees, observers, counter-protesters, or others at a privately sponsored event in a public forum. *See Parks v. City of Columbus*, 395 F.3d 643, 652 (6th Cir. 2005) ("The City cannot. . .claim that one's constitutionally protected rights disappear because a private party is hosting an event that remained free and open to the public.")

In *Parks*, an off-duty police officer, at request of the event organizer, threatened the plaintiff with arrest if he did not leave a festival in a public forum. The court noted that "Parks was acting in a peaceful manner and the only difference between him and the other patrons . . . was that he wore a sign communicating a religious message and distributed religious leaflets." *Id.* at 653-54. The officer's actions were unconstitutional because "the City has not offered an interest, let alone a compelling one, to explain why it prohibited Parks from exercising his First Amendment rights in a traditional public forum." *Id*. at 654.

Similarly, in *Gathright v. City of Portland*, the Ninth Circuit found that police had violated the free speech rights of a preacher when they repeatedly removed him from permitted events at the request of event sponsors, who objected to plaintiffs' misogynistic and anti-gay speech. 439 F.3d 573 (9th Cir. 2006). The court further upheld an injunction prohibiting the City from enforcing an ordinance that made it "unlawful for any person unreasonably to interfere with a permittee's use of a park."[1]

Officers also restrict speech based on content when they remove or arrest speakers based the expected or actual hostile response of others. In *Grove v. City of York*, 342 F.Supp.2d 291 (M.D. Penn. 2004), police told protesters that they could not hold signs depicting aborted fetuses on the sidewalk along the Halloween parade route, because they were making participants and bystanders increasingly hostile. The court found that the officers' actions were content based because they allowed a "heckler's veto" to the protesters' First Amendment rights. *Id.* at 303.

The *Grove* case further illustrates that the content of your speech includes not only your underlying message, but the words, gestures, and pictures – including profanity – with which you

[1] The ordinance had previously been invalidated because it the word "interfere" was unconstitutionally vague and overbroad, allowing the police to make content-based decisions about when it applied. *Id.* at 579. Chicago's parade ordinance has a similar prohibition. Code Sec. 10-8-330. In our opinion, it is also unconstitutionally vague.

choose to convey that message, and your speech may not be regulated on that basis. *See also Cohen v. California*, 403 U.S. 15, 26 (1971) (Government may not restrict particular words because it "might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views.")

Importantly, event organizers also have a First Amendment right to control *their own* message, and may exclude whomever they wish from contributing to *their* speech. For example, non-governmental parade organizers are not required to allow groups with opposing ideas to march in the parade. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995). It is my understanding, however, that the organizers of the Puerto Rican People's Parade have *invited* you to march in the parade this year.

Regardless of whether you actually march in the parade, however, you have the right to speak in the public forum where the parade takes place. As long as a reasonable person would understand that you are not purporting to speak for event organizers, neither they nor the police may regulate the content of your speech. As courts have repeatedly explained, speaking from the sidelines is not the same as marching in the parade, and does not violate the parade sponsors' constitutional rights. *See*, *e.g., Gathright*, 439 F.3d at, 577 (*"*There is a distinction between participating in an event and being present at the same location. Merely being present at a public event does not make one part of the organizer's message for First Amendment purposes") (quoting District Court opinion); *Parks*, F.3d at 651 ("Unlike the plaintiffs in [*Hurley*], Parks does not seek inclusion in the speech of another group"); *Wickersham v. City of Columbia Mo.*, 05-4061-CV-C-NKL, 2006 WL 4748740, at *5 (W.D. Mo. Mar. 31, 2006), *aff'd sub nom. Wickersham v. City of Columbia*, 481 F.3d 591 (8th Cir. 2007) ("The Plaintiffs . . . are not trying to participate in the Air Show or become members of the [sponsor]. They are not even asking to operate a booth. They only want to come into the public area of the event and pass out leaflets, petition, carry signs and wear expressive clothing."); *Mahoney v. Babbitt*, 105 F.3d 1452, 1456 (D.C. Cir. 1997) ("[Plaintiffs] do not seek compulsion or even permission to participate in the Inaugural Parade . . . . All they seek is the First Amendment-protected right to stand on the sidewalk and peacefully note their dissent as the parade goes by").

It is my understanding that the Revolution Club has spoken, and wishes to continue to speak, in public forums where permitted events take place (for example, on the sidewalk or other public forum adjacent to the Puerto Rican People's Parade). The Club and its members have a constitutional right to do so, regardless of whether they are also taking part in the event organizer's speech. Your speech in these circumstances may not be restricted based on the content of your speech.

2. Reasonable Time, Place, and Manner Restrictions

The government may enforce reasonable, content-neutral time, place, or manner (TPM) restrictions that are narrowly tailored to serve a significant government interest and leave open ample alternative means of communication. These may include regulation of sound levels, the height and heft of sign poles, obstructing traffic, or blocking access to buildings.

The First Amendment places limits on TPM restrictions to ensure that they are not used as a proxy for content regulation and that speakers have adequate means to communicate their message to their intended audience. For example:

- TPM restrictions may not be so vague that ordinary people do not understand what conduct is prohibited, or that police officers have unfettered discretion in determining when to enforce the ordinance. Vague laws are "traps for the unwary" that allow police to target particular groups, individuals, or messages for enforcement. Certain disorderly conduct or loitering ordinances are often unconstitutionally vague.
- TPM restrictions must not "burden substantially more speech than is necessary to further the government's legitimate interests." *See e.g.*, *Saieg v. City of Dearborn*, 641 F.3d 727, 740–41 (6th Cir. 2011) (Prohibition on leafletting around perimeter of Arab International Festival is not a reasonable TPM because it is too attenuated from the government's interest in free traffic flow.
- TPM restrictions may not be selectively enforced based on content or the identity of the speaker.
- TPM restrictions generally may not be so broad as to prevent speakers from reaching a particular audience or speaking at a place of particular symbolic significance.

Parts of Chicago's restrictions on sound amplification (Code Sec. 8-32-070), and other noise restrictions (Ch. 8-32) *might* be reasonable TPM restrictions, depending on their interpretation and enforcement. However, two important limitations apply. First, the ordinance explicitly exempts persons participating in a duly permitted public assembly, parade, athletic event, or outdoor special event. In our opinion, this exemption applies to your activities attending special events and communicating with other attendees. Second, even if the ordinance is a reasonable time, place, and manner restriction, it may be unconstitutional as applied to certain speech. For example, it would be unconstitutional to target particular individuals or group for special enforcement of the ordinance, or to enforce it where there are no alternative means of communicating the message to the intended audience.

III. Conclusion

The Revolution Club and its members have a First Amendment right to attend permitted events in public forums, including the Puerto Rico People's Parade. At such events, you have a First Amendment right to communicate your message to others who are present in the forum, and police may not make you leave the area or limit your speech based on your message, the words you use to communicate your message, or your membership in the Revolution Club.

Your speech may be subject to reasonable time, place and manner restrictions, as long as those restrictions are not too vague, do not burden substantially more speech than necessary, leave ample alternatives for communications, and are not selectively enforced against you. With respect to the sound amplification ordinance in particular, you are, in our opinion exempt from enforcement because you are participating in a permitted event.