



FIRE

Foundation for Individual
Rights and Expression

October 13, 2022

Sent Via FedEx Overnight Shipping and Email

Mike Pries, Dauphin County Board of Commissioners Chairman
Chad Saylor, Dauphin County Board of Commissioners Vice Chairman
George P. Hartwick, III, Dauphin County Board of Commissioners Secretary
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Re: Prohibition on Political Activity in Fort Hunter Park

Dear Commissioners:

The Foundation for Individual Rights and Expression (FIRE)¹ is deeply concerned by a recent incident in which Dauphin County Parks and Recreation Director Anthea Stebbins prohibited Pennsylvanians, including our clients Kevin Gaughen and Dave Kocur, from peacefully exercising their core First Amendment rights in Fort Hunter Park.

Mr. Gaughen is a board member of Pennsylvania's Keystone Party, a newly formed political party. Mr. Kocur is the Keystone Party's candidate for Pennsylvania House District 104. On Saturday, June 11, 2022, Mr. Gaughen and Mr. Kocur arrived at Fort Hunter Park intending to collect signatures to place Mr. Kocur on the ballot for November's general election. Two security guards approached Mr. Gaughen and Mr. Kocur and instructed them to leave the park because they were engaging in "political" activity. Mr. Gaughen and Mr. Kocur respectfully declined to leave, citing their First Amendment right to peacefully engage in political speech and petition activity in a public park. But Director Stebbins arrived and ordered them to cease collecting signatures, telling the pair that "no political activity" is permitted in Fort Hunter Park.

¹ FIRE is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the essential qualities of liberty.

Director Stebbins’s actions violated the First Amendment. The Supreme Court has clearly established that the “public retain[s] strong free speech rights when they venture into public streets and parks, ‘which 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.’” *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Ed. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983)). “[T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988). Mr. Gaughen and Mr. Kocur had every right to be in a public park on a Saturday peacefully collecting signatures for their political cause.

In ejecting our clients from the park, Director Stebbins pointed to language in the indenture conveying the park in trust to Dauphin County as purportedly banning political activity in the park. Director Stebbins is wrong. The indenture provides in pertinent part on pages 11–12:

No part of the net earnings of this Trust shall inure or be payable to or for the benefit of any individual and no substantial part of the activities of this Trust shall be the carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of this Trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign of any candidate for public office.²

By its plain text, the indenture prohibits the *Trust* from engaging in political activity (unsurprising, considering the Trust is managed by a 501(c)(3) organization). It does not prohibit *the public* from using the park to peacefully petition their neighbors.

Even if Director Stebbins were interpreting the indenture correctly, her actions still violate the First Amendment. The Supreme Court long ago made clear that the government may not rely on property conveyance restrictions to evade the commands of the Constitution. *Evans v. Newton*, 382 U.S. 296, 297 (1966) (holding the Fourteenth Amendment barred enforcement of a “for white people only” condition in a will devising property to the government for use as a park); *see also Marsh v. Alabama*, 326 U.S. 501, 506 (1946) (“The more an owner, for his

² Emphasis added. A copy of the indenture is enclosed.

advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it”).

Dauphin County’s prohibition on political activity in Fort Hunter Park is an ongoing violation of our clients’ First Amendment right to peacefully engage in political activity in a public park. At Director Stebbins’s instruction, Mr. Gaughen and Mr. Kocur have not returned to the park to engage in political activity. They would, however, like to return to Fort Hunter Park to solicit support for the Keystone Party before and after the November general election. Unless and until Dauphin County ceases this unconstitutional abridgment of Pennsylvanians’ First Amendment rights, they cannot.

Please provide confirmation no later than the close of business on Wednesday, October 19, 2022, that Dauphin County has ceased enforcing its prohibition on engaging in political activity inside Fort Hunter Park. If we do not receive such confirmation, FIRE will commence litigation and seek the full array of remedies including punitive damages and attorney’s fees.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me with any questions.

Sincerely,



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Attorney

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Staff Attorney

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AND EXPRESSION

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Commissioners Pries, Saylor, and Hartwick, III

Oct. 13, 2022

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cc: Joseph A. Curcillo, III, Esq., Chief Solicitor, Dauphin County Solicitor's Office, *via* FedEx Overnight and email to jcurcillo@dauphinc.org

Anthea Stebbins, Director Dauphin County Parks and Recreation Department, *via* FedEx Overnight and email to astebbins@dauphincounty.gov

Encl.