DAUPHIN COUNTY
SOLICITOR'S OFFICE

DAUPHIN COUNTY
PENNSYLVANIA

2 SOUTH SECOND STREET
P. O. BOX 1295
HARRISBURG, PA 17108
(717) 780-6300

October 19, 2022

Via Email and Regular Mail

Conor T. Fitzpatrick, Esq.
Jeffrey D. Zeman, Esq.
Foundation for Individual Rights and Expression
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

RE: Fort Hunter Park

Gentlemen:

By letter dated October 13, 2022, you wrote to the Dauphin County Commissioners concerning the use of Fort Hunter Park. Specifically, your letter begins as follows: "The Foundation for Individual Rights and Expression (FIRE) 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 * * * ." (Footnote omitted.)

At the direction of our client, the Dauphin County Commissioners, the Solicitor's Office has undertaken a review of the relevant facts and the sum and substance of your letter. Please consider this correspondence to be the county's official response.

You state that "[o]n 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." However, "[t]wo security guards approached Mr. Gaughen and Mr. Kocur and instructed them to leave the park because they were engaging in "political" activity". (Internal quotation marks included.) You then add: "* * * Director Stebbins arrived and ordered [Gaughen

and Kocur] to cease collecting signatures, telling the pair that "no political activity" is permitted in Fort Hunter Park." (Internal quotation marks included.)

On the basis of the foregoing facts, you accuse Director Stebbins of violating Gaughen and Kocur's First Amendment rights. In support of the accusation, you cite three decisions of the U.S. Supreme Court: (1) Meyer v. Grant, 108 S. Ct. 1886 (1988); (2) Perry Education Assn. v. Perry Local Educators' Assn., et al., 103 S. Ct. 948 (1983); and (3) Pleasant Grove City, Utah v. Summum, 129 S. Ct. 1125 (2009). Each case, in its own way, is inapposite.

You correctly cite Meyer v. Grant for the general proposition that "* * * [t]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech." 108 S. Ct. at 1892. (Internal quotation marks and footnote omitted.) However, the Court's reference to a "petition" involved a Colorado ballot initiative – not a candidate petition – and the case's specific holding (i.e., the state constitution's prohibition against "paying" circulators violates the First Amendment) has nothing at all to do with Fort Hunter Park.

Likewise you cite Pleasant Grove City in support of your argument even though that case – involving the placement of a permanent monument in a public park – dealt with **government speech**, and not with restrictions placed on government by the Free Speech Clause.

In fact, your reliance upon Pleasant Grove City is most inappropriate because your use of Perry Educ. Ass'n v. Perry Local Educators' Ass'n, supra, is completely taken out of context. Specifically, you use Pleasant Grove City, quoting Perry Educ. Ass'n, for the general proposition that the public retains free speech rights in 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." 103 S. Ct. at 954-955. (Internal quotation marks and citation omitted.) But you completely ignore Justice White's clear, unequivocal admonition that "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated **differ depending on the character of the property at issue**." (Emphasis added.) 103 S. Ct. at 954.

By ignoring Justice White's admonition, you create the erroneous impression that Perry supports your claims, whereas Justice White is actually acknowledging that local circumstances and the "character" of the property (e.g., the deed restriction on the political use of Fort Hunter Park) will determine what limits can be constitutionally placed on access to public property.

You also completely ignore Perry's clear reaffirmation of the principle that "[t]he state may also enforce 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." 103 S. Ct. at 955. Given the tone of your letter and the threat you make, your failure to address that settled principle of law is a point that really must be discussed.

Perry is an Indiana case involving a union's challenge to certain collective bargaining provisions, whereby the school district granted the "exclusive" bargaining representative "exclusive" access to teacher mailboxes and the interschool mail system. It has nothing whatsoever to do with what happened last summer at Fort Hunter.

That said, in addition to the point I've already made about Perry's acknowledgment of the importance of local circumstances (i.e., the character of the property), there is more language in Justice White's opinion that essentially supports the county's position in the dispute at hand. I am referring to this:

> **Public property which is not by tradition or designation a forum for public communication is governed by different standards.** We have recognized that the First Amendment does not guarantee access to property simply because it is owned or controlled by the government. In addition to time, place, and manner regulations, **the state may reserve the forum for its intended purposes,** communicative **or otherwise**, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. **As we have stated on several occasions, the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.** (Emphasis added; internal quotation marks and citations omitted.)
>
> Perry Educ. Ass'n, supra, 103 S. Ct. at 955.

Given Fort Hunter's history, a history of which your letter evinces some awareness, it is frankly irresponsible advocacy to distort Perry in support of your accusation without acknowledging Justice White's admonitions, and then attempting to draw some reasonable distinctions. Instead, your letter leaves a casual reader with an inaccurate impression of what the Court did and said in Perry.

For the reasons set forth in the Indenture, Fort Hunter Park is not open to political activity – by anyone! This has long been the policy of the Dauphin County Commissioners and their Parks and Recreation Department. The county's policy will not change in response to the threat made in your letter.

Finally, mention must be made of FIRE's treatment of Anthea Stebbins, the county's Director of Parks and Recreation. In addition to your letter's allegations against her, I have reviewed an email message and a voice message sent to Director Stebbins on October 13th.

In the email message, Robert Becker of FIRE wrote: "Very disappointed a public servant, whom [sic] is sworn to uphold the U.S. Constitution and the PA Constitution, does not know the rights within each Constitution."

The voice message is worse. As accurately transcribed, a FIRE supporter said this:

> Hello, miss Stebbins, I'm very disappointed that you seem to believe that the freedom of speech. [sic] The first amendment doesn't apply in Dauphin county Parks [sic] and doesn't apply to you [,] that you can demand people to stop talking politics, and a public forum [,] shame on you [,] resign your job. Thank you.

Anthea Stebbins is a valued county employee and a respected department director. She follows the law at all times, and her actions last summer are consistent with clear direction given to her. You and your representatives score no points with the Dauphin County Commissioners or the Solicitor's Office by unfairly attacking and belittling a fine public servant.

In conclusion, the Dauphin County Commissioners take a backseat to no one in their support of the U.S. Constitution and its Bill of Rights, including the First Amendment. The county's policy against political activity at Fort Hunter Park is a reasonable time, place, and manner restriction based upon the terms of the Indenture (i.e., the character of the property) and the time-honored tradition against such activity at the park. No one at Dauphin County is attempting to silence FIRE. You have ample opportunities at other places, including other county property, to exercise your constitutional rights.

Thank you for your attention to this letter.

Sincerely,

Guy P. Beneventano

Guy P. Beneventano

cc: Joseph A. Curcillo, III, Esq., Chief Solicitor

GPB/db