

# THE RUTHERFORD INSTITUTE

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August 9, 2012

Via E-mail and U.S. Mail

Gary Verburg, City Attorney  
Phoenix City Hall  
200 West Washington Street  
Phoenix, Arizona 85003

**Re: *First Amendment Violations at "First Friday" Festival***

Dear Mr. Verburg,

Dana Crow-Smith has authorized The Rutherford Institute<sup>1</sup> to intercede on her behalf in regards to a recent incident in which a Phoenix official, citing the City Code as justification for his actions, prohibited her from handing out free bottles of cold water to passersby on a public sidewalk during a "First Friday" festival as a means of exercising her Christian beliefs. The City's actions, problematic on numerous fronts, not only violated Ms. Crow-Smith's statutory and First Amendment rights to freely exercise her religion and Fourteenth Amendment due process rights, but were also completely unjustified under the City Code itself.

Ms. Crow-Smith, a Christian, had assembled with other Christians at a Phoenix "First Friday" festival in July to publicly express her Christian faith and engage willing passers-by in conversations about their religious beliefs. Having read a Bible passage referencing the importance of small acts of kindness such as offering water to the thirsty,<sup>2</sup> Ms. Crow-Smith was further moved to offer cold bottles of water to people at the Festival who were braving the desert's scorching 112-degree heat.

According to Ms. Crow-Smith, her group was approached by Neighborhood Preservation Inspector Dwayne Grierson, who told them that they were violating the

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<sup>1</sup> The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened or infringed.

<sup>2</sup> "And whosoever shall give to drink unto one of these little ones a cup of cold water only in the name of a disciple, verily I say unto you, he shall in no wise lose his reward." Matthew 10:42.

Phoenix City Code by giving away water without a vendor's permit. When Ms. Crow-Smith protested that a vendor's permit should not be required of citizens who merely sought to offer water as a free gift, Grierson insisted that the distribution was prohibited.

In fact, the Phoenix's City Code prohibits only "vending" on City sidewalks without a license agreement.<sup>3</sup> "Sidewalk vending" is defined as "peddling, vending, selling, displaying, or offering for sale any item of tangible personal property or other thing of value upon a sidewalk of the City of Phoenix."<sup>4</sup> As these provisions are expressly limited to the sale of goods, they clearly do not apply to Ms. Crow-Smith's act of giving away water. Thus, Inspector Grierson's actions constitute a completely unjustified interference with an act of charity by a private citizen and a violation of Ms. Crow-Smith's right to be free from interference with her fundamental liberty interests absent due process of law under the Fourteenth Amendment to the United States Constitution.

Moreover, because Ms. Crow-Smith's conduct was a manifestation of her sincerely-held religious beliefs, it is protected by the First Amendment to the United States Constitution and Arizona's Freedom of Religious Exercise Act, A.R.S. § 41-1493.01. The unjustified order by a City official, requiring Ms. Crow-Smith to cease lawful activity undertaken in exercise of her religious faith, constitutes a substantial burden on her religious exercise that is not the least restrictive means of furthering any compelling government interest. Indeed, it is unclear that the order served any legitimate interest whatever.

At this time, on behalf of Ms. Crow-Smith, we demand that you take the following actions immediately to rectify the grievous wrong committed by City officials:

- Issue a formal, written apology to Ms. Crow-Smith for the unwarranted interference with her most foundational civil rights;
- Assure her, in writing, that no City officials will interfere in the future with her distribution of water; and
- Require that all law enforcement officials in the City undergo training on proper enforcement of the City's Code, including training to ensure that officials will pay proper regard to citizens' exercise of First Amendment rights.

It is beyond comprehension that local government officials would interfere with citizens performing such a basic act of charity as giving water to the thirsty in your City.

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<sup>3</sup> § 31-25.

<sup>4</sup> § 31-22.

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The Rutherford Institute will take any and all means necessary to ensure that the citizens of Phoenix are liberated from the ever-tightening jaws of what appears to be a growing police state in Phoenix.

Please be aware that if this requires us to undertake legal action on Ms. Crow-Smith's behalf, your City will be liable for attorney's fees, as well as civil damages. I hope you will thoughtfully consider whether this is the type of battle the City wishes to fight. In light of the chilling effect that continues to impair Ms. Crow-Smith's religious exercise, we require your response by the close of business on Friday, August 17, 2012.

Sincerely yours,



John W. Whitehead, President

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cc: Doug Drury, Esq., Affiliate Attorney