

# THE RUTHERFORD INSTITUTE

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August 30, 2012

Via E-mail and U.S. Mail

Janis M. Haug, Assistant City Attorney  
Phoenix City Hall  
200 West Washington Street  
Phoenix, Arizona 85003

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

Dear Ms. Haug:

The Rutherford Institute<sup>1</sup> is in receipt of your August 17 letter regarding a recent incident in which Phoenix resident Dana Crow-Smith was informed by a Neighborhood Preservation Inspector that she was violating the Phoenix City Code by passing out free bottles of water without a vendor's permit to passersby on a public sidewalk during a "First Friday" festival.

As an organization that has been at the forefront of defending the constitutional rights of Americans for more than 30 years, we have grave concerns about the City of Phoenix's seeming intolerance for Christians attempting to exercise their constitutional rights and ongoing disregard for the rights of its residents, especially those engaged in charitable activities.<sup>2</sup> Indeed, while we take particular issue with your mischaracterization of the facts involved in Ms. Crow-Smith's situation, we find the City's "Mobile Vending Ordinance," which you referenced as justification for the City's actions, to be so overly broad that it lays itself open to constitutional challenges.

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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> Rutherford Institute attorneys have also come to the defense of Michael Salman, who was arrested, jailed and fined more than \$12,000 for hosting Bible studies on his private property.

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According to the terms of the Mobile Vending Ordinance and its accompanying definitions, Phoenix citizens are prohibited from giving away water—*on their own private property*—without first paying a \$350 application fee, a \$30 annual license fee, and waiting an estimated four weeks for the application to be processed. Not only does this ordinance create a substantial burden on the religious exercise of countless churches, synagogues, mosques and other religious institutions and individuals who may be compelled to perform acts of charity on their own private property, including the giving away of food, water or clothing, but it would also prohibit children from operating lemonade stands and hinder residents from holding yard sales unless they have first paid for and secured a permit.

Should you not be holding other residents to this same standard, the City may find itself facing additional charges of discrimination under the Fourteenth Amendment to the U.S. Constitution and Arizona's Free Exercise of Religion Act.

As to the particulars of the First Friday incident in question, we are neither diverted nor impressed by your attempt to suggest that Ms. Crow-Smith was doing anything other than lawfully exercising her right to free speech and free religious exercise under the First Amendment. A number of witnesses can attest to the fact that all four legs of Ms. Crow-Smith's table were planted firmly on the public sidewalk and not, as you suggest, on private property at 919 North First Street while she was "dispensing" free water to passersby.

One can only surmise how you came to conclude that Ms. Crow-Smith was standing on "private" property. Could it be that there were times when her feet briefly touched the strip of grass immediately behind the public sidewalk? Surely this does not constitute occupying private property in your book? If so, would it not have been a more prudent course of action for Mr. Grierson, whose mission is to "educate the public regarding compliance with City Code provisions," to simply have advised Ms. Crow-Smith to remain on the sidewalk at all times rather than attempt to shut down her charitable efforts?

There can be no rational basis—let alone a compelling interest—for the City of Phoenix to interfere with such basic charitable acts that provide a service to the community. Thus, it would behoove the City of Phoenix to immediately undertake whatever course of action may be necessary to make the appropriate adjustments to the City's Ordinances, including, for instance, providing exemptions for property owners who wish to give items away on their own private property, or for volunteers who give away items on private property with the consent of the property owner.

Finally, please be advised that Ms. Crow-Smith and others intend to participate in September's First Friday event and give water to thirsty passersby, thereby living out their sincerely held religious beliefs as Christians and exercising their First Amendment right to religious freedom. Ms. Crow-Smith intends to remain, at all times, on the public

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sidewalk while exercising her First Amendment rights in this regard. In turn, we expect the City to provide appropriate instructions to all of its staff and officials to ensure that Ms. Crow-Smith is treated equally with other Phoenix residents and that no encroachment upon her rights occurs.

We request a response by the close of business on September 5, 2012.

Sincerely yours,



John W. Whitehead  
President

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cc: Dana Crow-Smith  
Doug Drury, Esq., Affiliate Attorney