

THE RUTHERFORD INSTITUTE

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July 27, 2012

Mr. S. Chuck Kitchen
Turrentine Law Firm PLLC
920 B Paverstone Drive
Raleigh, NC 27615-0000

Re: *First Amendment Violations in Town of Holly Ridge*

Dear Mr. Kitchen:

Street preachers Jesse Michael Boyd and Richard Springer have asked The Rutherford Institute to intercede on their behalf regarding an incident that took place at a public park in Holly Ridge this year on the Fourth of July. As a representative of the Town of Holly Ridge, NC, we request that you relay our concerns and demands, as detailed herein.

Our investigation of the facts reveals that Holly Ridge police officers impeded the street preachers' ability to peacefully and lawfully exercise their core First Amendment rights. Making matters worse, these officers actually went so far as to handcuff Mr. Boyd, transport him in a police car to the City's law office, detain him in County Jail, predicate his release from jail with a bond of \$500, and charge him with disorderly conduct.

The particulars of what happened are as follows:

On July 4, 2012, Mr. Boyd (who was enjoying a time of rest after completing 13 months of charity work in Third World nations abroad) and Mr. Springer were engaged in free speech and religious exercise at a public park in Holly Ridge. Mr. Springer was preaching with the aid of a handheld amplification device in order to enable him to be heard above the din, and Mr. Boyd stood nearby recording the preaching. A Holly Ridge police officer, who was allegedly responding to a complaint, approached Mr. Springer and informed him that his use of the amplification device was a violation of the Town's noise ordinance, and that he must therefore turn it off. Mr. Springer complied with this order. Mr. Boyd asked to speak with the officer's supervisor, and complained to the chief of police that the order violated his First Amendment rights. As the officers walked

away, Mr. Boyd called after them, "shame on you officers, this is the USA, not the Soviet Union," and stated that the officers needed to "repent."

The officers walked back to the two men and instructed Mr. Boyd to go with them. When Mr. Boyd inquired as to whether he was under arrest, the officer responded, "yes." Officer Whaley then tightly handcuffed Mr. Boyd and led him away in this humiliating fashion. Neither officer informed Mr. Boyd of any laws that he had violated. Another officer instructed Mr. Springer that he could not follow behind Mr. Boyd to record the interactions with police.

Officer Whaley then unlawfully forced Mr. Boyd into the back of his police vehicle. He did not allow Mr. Boyd to give Mr. Springer the keys to the vehicle they were sharing that evening, leaving Mr. Springer thus stranded at the park. Mr. Boyd, forced to wait in the police car for approximately 15 minutes, was then transported approximately 45 minutes to the County Magistrate's office. At the magistrate's office, Mr. Boyd was placed in a holding cell for approximately one hour, still shackled in handcuffs. Eventually, Mr. Boyd was taken out of the holding cell and presented with the formal charge of "disorderly conduct." Officers then transported Mr. Boyd to the Onslow County Jail, where he remained for more than an hour. Meanwhile, Mr. Springer, still stranded in the park without transportation, was forced to contact relatives who were vacationing in a town 26 miles away to request that they pick him up and post the \$500 bond for Mr. Boyd.

On July 10, 2012, the District Attorney, recognizing that Mr. Boyd's statement was fully protected free speech under the First Amendment to the United States Constitution, dismissed the "disorderly conduct" charge against the street preacher. The Memorandum of Dismissal is attached for your reference.

While the DA had the good sense to dismiss the charges against Mr. Boyd as baseless and unconstitutional, our investigation of the matter reveals that the officers' actions cannot wholly be blamed on ignorance of citizens' fundamental First Amendment rights. Indeed, the Town's noise ordinance (the basis upon which officers first instructed Mr. Springer to cease use of his amplification device) suffers from the constitutional defects of vagueness and overbreadth, in that it enables officers to use wholly subjective factors, such as annoyance, to determine that citizen speech is unlawful. In this way, officers are empowered to suppress expression based on the viewpoint thereof and citizens are left to speculate about when their constitutionally protected expression might be deemed as rising to the level of violating the ordinance. Both the United States Supreme Court and the Fourth Circuit Court of Appeals have struck down local ordinances based on similar defects.¹

¹ See *Saia v. New York*, 334 U.S. 558, 562 (1948) (striking down noise ordinance using "annoyance" as criterion, noting that annoyance at ideas can be cloaked as annoyance at sound); *U.S. Labor Party v. Pomerleau*, 557 F.2d 410 (4th Cir. 1977) (noise ordinance unconstitutionally vague because it did not specify precise location from which decibel level to be measured by police).

Of equal concern are public statements made by Town officials, including Mayor Elmer Padgett, to the effect that Town police officers are justified in interfering with speech in the event that any other citizen complains. Such a scheme poses obvious defects under both the First and Fourteenth Amendments of the United States Constitution, as it confirms that unconstitutionally vague and overbroad ordinances are being used by police as a “heckler’s veto.” This, again, is impermissible under our Bill of Rights.²

That public streets, sidewalks and parks are the quintessential public forums is surely one of the most clearly established principles of constitutional law.³ Speech that occurs in these forums enjoys the very highest level of protection, and any government actions that interfere with expression on these types of public property will be subjected to strict scrutiny.

Moreover, the United States Supreme Court has specifically held that “[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. ‘Speech is often provocative and challenging.... [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.’”⁴

By all applicable standards, the actions of police officers to interfere with Mr. Boyd’s and Mr. Springer’s peaceful exercise of protected First Amendment rights on July 4th were unlawful. As a result, both Mr. Boyd and Mr. Springer suffered humiliation, mental anguish, inconvenience, travel expenses, the loss of precious time, and the loss of irreplaceable opportunities to share their message with others in the park. Thus, on behalf of Mr. Boyd and Mr. Springer, the Institute demands that the Town take immediate action to rectify the grievous wrongs that were done to them by these Holly Ridge officers acting under color of their office.

Given that these officers were clearly ignorant of the dictates of the Constitution they swore to uphold, as well as the constitutional rights of those they are duty-bound to protect, we seek your assurance that government officials will take proactive measures to ensure that officers demonstrate proper regard for the First Amendment in their future interactions with citizens.

² See, e.g., *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123, 142 (1992).

³ See *United States v. Kokinda*, 497 U.S. 720, 726-28 (1990); *United States v. Grace*, 461 U.S. 171, 177 (1983); *Perry Education Assn. v. Perry Local Educator’s Assn.*, 460 U.S. 37, 45 (1983); *Hudgens v. NLRB*, 424 U.S. 507, 515 (1976); *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941); *Hague v. CIO*, 307 U.S. 496, 515 (1939).

⁴ *City of Houston, Texas v. Hill*, 482 U.S. 451, 461 (1987) (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4, (1949)).

At this time, on behalf of Mr. Boyd and Mr. Springer, we insist that you undertake the following actions to remedy this situation:

- Revise your noise ordinance to provide proper objective standards to guide citizens and law enforcement;
- Provide written assurance that City officers will refrain from interfering with protected free speech in the future and confirmation that the City will provide adequate training to its police officers in the application of its noise ordinance and any applicable laws concerning "disorderly conduct," including training centered on respecting the First Amendment rights of all citizens;
- Pay the sums of \$8,000 to Mr. Boyd and \$5,000 to Mr. Springer as compensation for the irreparable loss of precious First Amendment rights to effective communication, mental anguish, public humiliation, for Mr. Boyd's unlawful arrest, and for the expenditure of time and energy involved in addressing the bogus charge; and
- Pay attorneys' fees in the amount of \$2000.

Please be assured that we take this matter extremely seriously as it concerns those rights that are the very cornerstone of civil liberty. We hope that you will do the same. To this end, we request your response by no later than August 10, 2012.

Should you fail to confirm the Town's intention to meet all of the terms outlined above, we will advise our clients of their legal options.

Sincerely yours,

John W. Whitehead
THE RUTHERFORD INSTITUTE

cc: Jesse Boyd
Richard Springer
Steve McCloskey, affiliate attorney with The Rutherford Institute