

THE RUTHERFORD INSTITUTE

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INTERNATIONAL OFFICE
CENTRAL AND EASTERN EUROPE
Budapest, Hungary

September 10, 2014

Jason Kilcrease
City of Ocala
Revitalization Strategies Department
Code Enforcement Division
201 SE 3rd Street (2nd floor)
Ocala, Florida 34471

Via Telefax, Electronic Mail and Certified Mail

**Re: Case Number: COM14-1311
THE GEAR BARREL, INC. / First Amendment Violation**

Dear Mr. Kilcrease:

The Rutherford Institute has been contacted by Keith and Hannah Greenberg, owners and operators of The Gear Barrel, Inc., regarding a Notice of Violation issued by you dated August 29, 2014, asserting a violation of § 110-131 of the Code of Ordinances of the City of Ocala. The Greenbergs inform us that in conversations with you they were told that the violation is based on their display of a flag bearing the words “Dont Tread on Me” on a yellow background in front of their business. They further inform us that they were told they could fly a flag in front of their establishment only if it was the United States flag.

The demand that the Greenbergs remove the flag and the ordinances upon which the demand is based are patently in violation of the First Amendment to the United States Constitution and must be withdrawn forthwith. It is clear that the asserted violation of § 110-131 is that their flag is not one that is “specifically allowed in this chapter.” Ocala Code § 110-131(8). Flags which are allowed include the official flags of the United States and the State of Florida, Ocala Code § 110-3, as well as governmental and religious flags, Ocala Code § 110-6(7). These provisions constitute a content-based restriction on speech and are unconstitutional. This is established by the decision of the Eleventh Circuit Court of Appeals in *Dimmitt v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993), which struck down that city’s sign ordinance that allowed only flags representing a governmental unit to be displayed without a permit. The court

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held that by “limiting the permit exemption to government flags, the City has unconstitutionally differentiated between speech based upon its content.”

The Ocala Code provisions that you relied upon in your Notice of Violation are indistinguishable from the City of Clearwater provisions struck down in the *Dimmitt* case over 20 years ago. Moreover, that the basis for citing the Greenbergs with a violation is the content of the expression on their flag is confirmed by a September 9, 2014 posting on the City of Ocala’s Facebook page, which indicates that the flag would be exempt if it was the flag of the United States or of the State of Florida. Contrary to the conclusion of that posting, and as demonstrated by the *Dimmitt* decision, this is a content-based restriction on speech that violates the First Amendment.

Because the notice and threat to prosecute infringe on the Greenberg’s First Amendment rights, it is imperative that these actions be renounced immediately and assurances provided that they will not be cited again for displaying their flag. In order to advise the Greenbergs on how they can protect their rights, we must have a response to this letter on or before the close of business September 12, 2014.

Sincerely,



John W. Whitehead
President

cc: The Hon. Kent Guinn, Mayor
Marc Mondell, Executive Director, Community Development