



December 7, 2020

Members of Murphy Town Council  
5 Wofford Street  
Murphy, NC 28906

RE: Town Ordinance § 90.080 et seq.

Dear Councilmembers:

Christian Legal Society is the oldest Christian religious freedom organization in the country. I write on behalf of Mary Mason, who approached us regarding the Town of Murphy's (the "Town") denial of a permit to practice evangelism along the streets and sidewalks of Murphy. The Town has told Ms. Murphy that she is required to get a permit because she performs religious outreach with her disabled daughter and, therefore, invokes the Town's permit requirement for "two or more persons" engaged in expressive activity. *See* Ordinance § 90.080 (defining "group demonstration," "parade," and "picket line" as "two or more persons" engaged in expressive activity); Ordinance § 90.081 (outlawing participation in a "parade, picket line, or group demonstration" without a permit). The Town threatens criminal fines or imprisonment up to 30 days for any violations of its permitting scheme. *See* Ordinance § 90.999. Because the Fourth Circuit and numerous other federal circuit courts have uniformly held that requiring permits for groups as small as two to gather is unconstitutional, we respectfully request the Town to cease all attempts to enforce its permitting requirements against Ms. Mason and her daughter.

As both the U.S. Supreme Court and Fourth Circuit have noted, "any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication." *Cox v. City of Charleston, SC*, 416 F.3d 281, 284 (4th Cir. 2005) (quoting *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992)). A permitting scheme is a prior constraint with a "heavy presumption against its constitutional validity." *Id.* (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). As such, the Town "may not 'burden substantially more speech than is necessary to further the government's legitimate interests.'" *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989)).

Here, the Town's permitting scheme falls far short of long-held constitutional standards. Ms. Mason's case is a prime example of the constitutional shortcomings of the Town's permitting scheme. The Town has told Ms. Mason that her religious outreach requires a permit because she brings her disabled daughter along with her during her evangelistic endeavors, which triggers the Town's permitting ordinance because it involves "two or more people" engaged in expressive activity. *See* Ordinance § 90.081. The Fourth Circuit has expressly held that a permitting requirement that extends "to groups as small as two or three renders it constitutionally unfirm." *Cox*, 416 F.3d at 285. Moreover, the

Fourth Circuit noted that numerous circuit courts have similarly held that permit requirements for small groups are unconstitutional. *See id.* at 286 (citing *Grossman v. City of Portland*, 33 F.3d 1200, 1205-08 (9th Cir. 2004); *Douglas v. Brownell*, 88 F.3d 1511, 1525 (8th Cir. 1996); *Cnty. for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1392 (D.C. Cir. 1990)).

The Town's permitting scheme is materially identical to the Travelers Rest permit requirement that the Fourth Circuit held "facially violates the First Amendment." *Id.* The Travelers Rest ordinance made it "unlawful for any person to organize, hold or participate in any parade, meeting, exhibition, assembly or procession of persons and/or vehicles on the streets or sidewalks of the city, unless such activity shall have first been authorized by a written permit." *Id.* at 283. The Town's ordinance prohibits nearly identical activity. It reads:

It shall be unlawful for any person to organize, conduct, or participate in any parade, picket line, or group demonstration in or upon any street, sidewalk, alley, or other public place within the town unless a permit therefor has been issued by the town in accordance with the provisions of this subchapter.

Like the facially invalid ordinance in *Cox*, the Town's ordinance applies to groups as small as "two or more persons." *See* Ordinance § 90.080 (defining "group demonstration," "parade," and "picket line" as "two or more persons" engaged in expressive activity). Moreover, the Town has threatened to enforce its permitting scheme against groups as small as two, namely Ms. Mason and her daughter.

The Town's ordinance on its face applies to practically any expressive activity by a group of two or more people. For example, two people walking down the street having a conversation are "making known a position" in violation of the ordinance. As such, the Town's permitting scheme is overbroad and facially unconstitutional. *See Cox*, 416 F.3d at 286. Moreover, the ordinance expressly applies to expressive activity on streets, sidewalks, and parks, each of which is in specific contemplation of the permitting scheme. *See* § 90.081 (referencing streets and sidewalks); § 90.080 (including "parks" under definition of parade). Streets, sidewalks and parks are "quintessential public forums." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 817 (1985)). Such places "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 thought between citizens, and discussing public questions." *McCullen v. Coakley*, 573 U.S. 464, 476 (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009)). Moreover, the ordinance applies to all public areas; it does not provide *any*, much less ample, alternatives for communication.

In summary, the Town's threats to incarcerate or fine Ms. Mason for evangelizing with her daughter without a permit are plainly unconstitutional. Please note that any attempt to require Ms. Mason and her daughter to get a permit in the future is in violation

Murphy Town Council

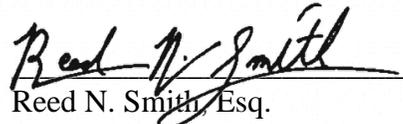
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of well-established law, and the Town and its officials are hereby put on notice of such law. As such, future attempts to enforce this permitting scheme against Ms. Mason and her daughter can, and likely will, result in personal liability against officials involved in such enforcement.

I am happy to discuss further and can be reached at [rsmith@clsnet.org](mailto:rsmith@clsnet.org) or the phone number below.

Respectfully,

A handwritten signature in black ink that reads "Reed N. Smith". The signature is written in a cursive style and is positioned above a horizontal line.

Reed N. Smith, Esq.  
Director of Litigation  
Christian Legal Society Center for  
Law and Religious Freedom