FIRE
Foundation for Individual Rights and Expression

March 27, 2023

Mayor Dave Gattis
City of Belleair Beach
444 Causeway Boulevard
Belleair Beach, Florida 33786

Sent via U.S. Mail and Electronic Mail (Dave.Gattis@cityofbelleairbeach.com)

Dear Mayor Gattis:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,[1] is concerned by a City of Belleair Beach ordinance that prohibits "political" or "organized" gatherings of ten or more people on all city property. This ordinance violates the First Amendment and diverges from our nation's cherished tradition of citizens taking to streets, sidewalks, and parks to make their voices heard on issues of public concern. The city must repeal or amend the ordinance to remedy its ongoing violation of the First Amendment.

Division 3 of the Belleair Beach City Code governs "[a]ll parks and playgrounds and other city-owned property."[2] Within Division 3 of the Code, Section 38–87(a) requires any group of ten or more people "who desire to have a gathering in any city park or playground or other public property" to "obtain a permit for such picnic or other public gathering from the city manager at the city hall during office hours, at least 12 hours prior to the time of such gathering."[3] Subsection (b) states, "No permits shall be granted by the city manager for the conduct of any commercial, political, or organized event by any person, group or organizer."[4]

As an initial matter, the ordinance is unconstitutionally vague because it fails to define the terms "political" and "organized." A law is unconstitutionally vague when people "of common intelligence must necessarily guess at its meaning."[5] Laws must "must provide explicit

[1] For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

[2] Belleair Beach City Code § 38–81, *available at* https://bit.ly/3FjeZzK.

[3] *Id.* § 38–87(a).

[4] *Id.* § 38–87(b).

[5] *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

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standards for those who apply them" to prevent "arbitrary and discriminatory enforcement."[6] In the First Amendment context, vague laws present the additional danger of chilling lawful speech.[7]

As the Supreme Court has noted, the term "political" is "expansive" and can encompass an all but limitless range of protected speech "relating to government, a government, or the conduct of governmental affairs."[8] The term "organized" is likewise vague. Any planned activity—including a picnic, which the ordinance mentions as an example of a *permissible* group activity—could plausibly be described as "organized." But even if Belleair Beach amended the ordinance to resolve its vagueness issues, its content-based restrictions on speech and burden on free association would still violate the First Amendment.

The Supreme Court has firmly established that the "public retain[s] strong free speech rights when they venture into public streets and parks, 'which 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 thoughts between citizens, and discussing public questions.'"[9] Indeed, "streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely."[10] The authority of government actors like Belleair Beach to "limit expressive activity" in these quintessential public forums is "sharply circumscribed."[11] Any content-based restriction on speech in a traditional public forum must be necessary to serve a compelling state interest and be narrowly tailored to advancing that interest.[12]

Belleair Beach's broad restriction on political gatherings is content-based because it singles out a specific category of speech for suppression. The ban is not narrowly tailored to serving a compelling government interest: It closes *all* of the city's parks and open spaces to political expression by groups of ten or more people. In fact, this restriction applies to *all* "public" or "city-owned" property, which means even public streets and sidewalks are off limits. In other words, there are *no* public spaces in which political marches, protests, rallies, and the like are allowed. But the First Amendment does not tolerate a "blanket exclusion of First Amendment activity from a municipality's open streets, sidewalks, and parks."[13] This broad prohibition of core First Amendment speech in public areas where citizens have traditionally banded

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[6] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

[7] *Id.* at 109.

[8] *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1888 (2018).

[9] *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983)); *see also Frisby v. Schultz*, 487 U.S. 474, 480 (1988) ("Time out of mind public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum.") (cleaned up).

[10] *Carey v. Brown*, 447 U.S. 455, 460 (1980) (cleaned up).

[11] *Perry Educ. Ass'n*, 460 U.S. at 45.

[12] *Id.*

[13] *Greer v. Spock*, 424 U.S. 828, 835 (1976).

together to speak on issues of the day is plainly irreconcilable with the First Amendment.[14] If the government cannot even ban "political" apparel inside a polling place[15]—a nonpublic forum where the state has strong interests in running fair and orderly elections—then it certainly cannot broadly restrict "political" expression in traditional public forums like public parks and sidewalks.

The city's restrictions on "political" and "organized" events also violate the First Amendment's protections for freedom of association and assembly. The First Amendment protects not only the right of an individual to speak, but also the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."[16] The "right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental."[17] The First Amendment's fundamental protection of the freedoms of association and assembly recognizes that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."[18]

Any regulation "which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."[19] It will be upheld only when it is "adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms."[20]

Section 38–87 *is* related to the suppression of ideas. It specifically bans "political" and "organized" events consisting of ten or more people on public property, while allowing non-"political" or non-"organized" expressive gatherings of the same size. Belleair Beach has no legitimate interest, let alone a compelling one, in banning only gatherings that are "political" or "organized" in nature. Whatever interest the city might have in regulating certain large gatherings for reasons unrelated to their expressive purpose, a flat ban on "organized" events of ten or more people is far from the least restrictive means of advancing that interest.[21]

The First Amendment's guarantees of free speech, free assembly, and free association do not disappear when a group of speakers exceeds nine people.

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[14] *Pleasant Grove City*, 555 U.S. at 469; *see also Ariz. Free Enter. Club's Freedom Fund PAC v. Bennett*, 564 U.S. 721, 755 (2011) ("[T]here is practically universal agreement that a major purpose of the First Amendment was to protect the free discussion of governmental affairs."); *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 50 (1988) ("At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern."); *United States v. Grace*, 461 U.S. 171 (1983) (striking down ban on demonstrations on sidewalks abutting Supreme Court).

[15] *Mansky*, 138 S. Ct. 1876.

[16] *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

[17] *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937) (cleaned up).

[18] *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958).

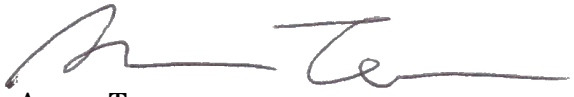
[19] *Id.* at 460–61.

[20] *Roberts*, 468 U.S. at 623.

[21] *See NAACP v. Button*, 371 U.S. 415, 438 (1963) ("Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone.") (cleaned up).

FIRE calls on Belleair Beach to eliminate Section 38–87's unconstitutional defects and ensure the city's traditional public forums are open to those wishing to exercise their First Amendment rights. We respectfully request a substantive response to this letter no later than April 10, 2023.

Sincerely,



Aaron Terr
Director of Public Advocacy

Cc: Jody Shirley, Vice Mayor
Frank Bankard, Council Member
Leslie Notaro, Council Member
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