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City of Saginaw City Council
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Dear Council Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by a proposed Saginaw ordinance regulating “nuisance gatherings.” While the City Council may intend only to address legitimate concerns about unlawful conduct at parties and similar events, the ordinance’s broad terms encroach on constitutionally protected activity. By holding those who host or attend expressive gatherings criminally responsible for others’ unlawful conduct, the ordinance would violate the First Amendment’s prohibition on guilt by association. FIRE therefore calls on the Saginaw City Council to reject it.

The proposed ordinance would prohibit “nuisance gatherings,” defined as “[a] social gathering or party, whether static or mobile, conducted on any public or private premises ... and which, by reason of the conduct of those persons in attendance,” results in any one of ten enumerated conditions or events in a manner that violates state or local law.¹ Those conditions include, among other things, the “use or possession of any controlled substance or drug”; “damage or destruction of public or private property”; “generation of pedestrian or vehicular traffic which obstructs the free flow of traffic within the public rights-of way or interferes with the ability to render police or other emergency services”; and “[p]ublic disturbances, brawls, fights, quarrels or similar disturbances.”²

¹ CITY OF SAGINAW, AN ORDINANCE TO ADD §94.120 “NUISANCE GATHERINGS” TO CHAPTER 94 “NUISANCES; HEALTH AND SAFETY,” TITLE IV “GENERAL REGULATIONS,” OF THE CITY OF SAGINAW CODE OF ORDINANCES, O-1, §94.120(B)(1), (C)(1) (July 27, 2026).

² *Id.* § (B)(1).

Subsection (C)(2) (the “host provision”) would impose criminal liability on any “owner, occupant, tenant” or other person “having any possessory control ... of any premises who either sponsors, conducts, hosts, invites, suffers, permits, continues, or allows to continue a nuisance gathering at such premises.” That subsection adds: “In any prosecution for a violation of this section, proof of specific intent shall be required as a necessary element.”³

The ordinance would separately impose liability on “[a]ny person in attendance at a nuisance gathering, whether or not such person has any possessory control over the premises.”⁴ This separate subsection (the “attendee provision”) does not specify a culpable mental state or act beyond simply being present as a nuisance gathering. Violations of either provision would be misdemeanors punishable by up to 90 days’ imprisonment or a fine not exceeding \$500.⁵

The proposed ordinance would violate the First Amendment, which does not permit the government to punish individuals engaged in expressive activity based on the misconduct of others.

To be sure, the First Amendment does not protect violence or other illegal activities listed in the proposed ordinance. But “when such conduct occurs in the context of constitutionally protected activity,” the First Amendment controls and “precision of regulation is demanded.”⁶ The First Amendment protects the “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious and cultural ends.”⁷ The government may not punish individuals for exercising this right merely because others participating alongside break the law.

In *NAACP v. Claiborne Hardware Co.*, the Supreme Court applied that principle to a civil-rights boycott in which some participants engaged in violence and other unlawful conduct.⁸ Although those who perpetrated violence or threats could be held liable for their conduct, the Court refused to treat the entire boycott as illegal or allow liability to extend indiscriminately to other participants.⁹ “[M]ere association with [a] group” was not

³ *Id.* § (C)(2).

⁴ *Id.* § (C)(3).

⁵ The ordinance states violations “shall be punished as provided in §94.999,” which provides that “[a]ny person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 30.99.” That section, in turn, states that “[u]nless a violation of this code or any ordinance of the city is specifically designated in the code or ordinance as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.”

⁶ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982) (cleaned up).

⁷ *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984); *see also NAACP v. Alabama*, 357 U.S. 449, 460 (1958) (“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.”).

⁸ 458 U.S. 886, 908 (1982).

⁹ *Id.* at 920 (“[L]iability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence.”).

enough.¹⁰ Rather, liability based on association required proof “that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims.”¹¹

The Court applied that rule not only to ordinary participants but also to those who organized and led the boycott. The leaders could not be held liable because there was no evidence they “authorized, ratified, or directly threatened acts of violence.”¹² Nor could their advocacy supply the missing link because it was not “directed to inciting or producing imminent lawless action and ... likely to incite or produce such action.”¹³ As the Supreme Court reemphasized just this year, “government actions tending to ‘curtai[l] the freedom to associate’ warrant ‘the closest scrutiny’ under the First Amendment.”¹⁴

The proposed ordinance disregards these well-established constitutional principles. As an initial matter, the term “social gathering” is undefined, but its ordinary usage is broad enough to encompass gatherings that involve expressive activity.¹⁵ A protest, political fundraiser, organizing meeting, Pride event, or religious gathering may be both social and expressive, triggering First Amendment protection. Under the ordinance, any such event becomes a “nuisance gathering” and is automatically prohibited if a single participant commits a qualifying act.

Consider 20 people who gather in a public park to hand out political pamphlets. If one of them possesses an illegal drug, the whole assembly would be deemed unlawful. Everyone in attendance would have committed a misdemeanor, even if they neither knew about nor had anything to do with the drugs. The First Amendment does not permit that result: “Strip away the ability of individuals to work together free from governmental oversight and

¹⁰ *Id.* at 925.

¹¹ *Id.* at 920.

¹² *Id.* at 929.

¹³ *Id.* at 928 (citing First Amendment exception for “incitement” articulated in *Brandenburg v. Ohio*, 395 U.S. 444 (1969)). *Claiborne* is one of many Supreme Court decisions recognizing that the First Amendment precludes punishment for associating with a group for expressive ends merely because the group has an unlawful purpose or some of its members have committed illegal acts. *See, e.g., Healy v. James*, 408 U.S. 169, 186 (1972) (“Guilt by association alone, without establishing that an individual’s association poses the threat feared by the Government, is an impermissible basis upon which to deny First Amendment rights. The government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims.”) (cleaned up); *Elfbrandt v. Russell*, 384 U.S. 11, 19 (1966) (“A law which applies to membership without the ‘specific intent’ to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of ‘guilt by association’ which has no place here.”). Even punishment of an individual for his *own* behavior generally requires proof of subjective intent when that behavior takes the form of speech. The Court recently held the First Amendment requires proof of subjective intent to prosecute someone for making a true threat, to avoid a “chilling effect” on protected speech. *Counterman v. Colorado*, 600 U.S. 66, 75 (2023).

¹⁴ *First Choice Women’s Res Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1122 (2026) (quoting *NAACP v. Alabama*, 357 U.S. at 460–61).

¹⁵ *Social*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/social> (“marked by or passed in pleasant companionship with friends or associates”).

intrusion, and the freedom to associate may become no freedom at all—individuals deterred, groups diminished, and their protected advocacy suppressed.”¹⁶

Unlike the attendee provision, the host provision requires proof of “specific intent,” but specific intent to do what?¹⁷ Is it enough that a defendant intended to continue a nuisance gathering knowing that an attendee committed one of the qualifying illegal acts? That standard would fall short of what *Claiborne* requires. To comply with the First Amendment, the ordinance must require proof the gathering had illegal aims and the defendant *specifically intended to further those aims*.

This ambiguity raises an independent vagueness problem. A criminal law must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.”¹⁸ As the Supreme Court has warned, a vague law “may trap the innocent by not providing fair warning,” invite “arbitrary and discriminatory enforcement,” and, when it “abuts upon sensitive areas of basic First Amendment freedoms, ... inhibit the exercise of those freedoms.”¹⁹

Even setting aside the personal-liability provisions, the proposed ordinance would violate the First Amendment by declaring any gathering unlawful based on isolated misconduct. The “right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.”²⁰ In *Claiborne*, the Supreme Court accordingly held that an injunction against the boycott could not stand.²¹ The Court distinguished an earlier case involving violence so pervasive that otherwise-protected picketing could be enjoined, emphasizing that isolated misconduct could not justify the same result.²²

In *Bible Believers v. Wayne County*, the U.S. Court of Appeals for the Sixth Circuit—whose decisions bind Saginaw—likewise made clear that “when the police seek to enforce law and order, they must do so in a way that does not unnecessarily infringe upon the constitutional rights of law-abiding citizens.”²³ Police may arrest lawbreakers, separate opposing groups, and, when the circumstances make it necessary, disperse an entire

¹⁶ *First Choice Women’s Res. Ctrs.*, 146 S. Ct. at 1123.

¹⁷ The host provision’s specific-intent requirement refers to “any prosecution for a violation of this section,” which might be read to reach the entire ordinance, including any prosecution for violating the attendee provision. But the specific placement of the language within the host provision indicates it applies only to the conduct described there. Even if this vague “specific intent” requirement applied across the board, it would not resolve the constitutional problems, as discussed below.

¹⁸ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

¹⁹ *Id.* (cleaned up).

²⁰ *Claiborne Hardware Co.*, 458 U.S. at 908.

²¹ *Id.* at 924 n.67.

²² *Id.* at 923 (discussing *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941)).

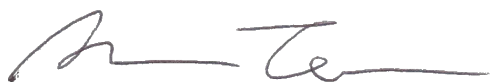
²³ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 253 (6th Cir. 2015) (*en banc*).

crowd.²⁴ But when officers can address illegal conduct *without* shutting down protected expression, they must do so.²⁵ The proposed ordinance flies in the face of this principle. A single attendee's drug possession, assault, act of vandalism, or other qualifying offense is sufficient to make an expressive gathering a prohibited public nuisance, without regard to whether authorities can effectively deal with the offender without terminating others' expressive activity.

The ordinance could also facilitate an especially potent form of the "heckler's veto" the Sixth Circuit condemned in *Bible Believers*.²⁶ For example, a person hostile to a demonstration could join it and then deliberately engage in one of the enumerated offenses, such as generating noise that violates Saginaw's noise ordinance. A straightforward application of the ordinance would allow the detractor's own misconduct to render the gathering unlawful and turn all attendees into criminals. But the First Amendment does not permit the government to punish individuals because their expressive activity provokes misconduct by others.²⁷

Because "guilt by association is a philosophy alien to the traditions of a free society and the First Amendment itself,"²⁸ FIRE strongly urges the City Council to reject the proposed ordinance.

Sincerely,



Aaron Terr
Director of Public Advocacy

Cc: Kristine Bolzman, City Clerk

²⁴ *Id.*; see also *Bell v. Keating*, 697 F.3d 445, 457 (7th Cir. 2012) (police can disperse an assembly when necessary to stop a riot or prevent "imminent physical or property damage").

²⁵ *Bible Believers*, 805 F.3d at 253 ("Fundamentally, no police action that hinders the speaker's freedom of speech should be deemed legitimate in the eyes of the Constitution unless it satisfies strict scrutiny, which requires the police to achieve their ends by using only those means that are the least restrictive with respect to the speaker's First Amendment rights.").

²⁶ The traditional heckler's veto occurs when "occurs when police silence a speaker to appease the crowd and stave off a potentially violent altercation." *Bible Believers*, 805 F.3d at 234. The "First Amendment does not countenance a heckler's veto," which is a form of "odious viewpoint discrimination." *Id.* at 248.

²⁷ *Id.* at 252 ("If the speaker's message does not fall into one of the recognized categories of unprotected speech, the message does not lose its protection under the First Amendment due to the lawless reaction of those who hear it.").

²⁸ *Claiborne Hardware Co.*, 458 U.S. at 932. While this letter focuses on the ordinance's implications for expressive gatherings, we note that even outside the First Amendment context, a greater degree of participation in malfeasance is generally required before liability can attach. See *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 490 (2023) (liability for aiding and abetting criminal conduct requires proof the defendant took "some affirmative act with the intent of facilitating the offense's commission") (cleaned up).