

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

KEVIN GAUGHEN and DAVID
KOCUR,

Plaintiffs,

v.

DAUPHIN COUNTY, a political
subdivision of the Commonwealth
of Pennsylvania and
ANTHEA STEBBINS, in her
individual capacity,

Defendants.

Civil Action No.: _____

**VERIFIED COMPLAINT FOR
CIVIL RIGHTS VIOLATIONS**

JURY TRIAL DEMANDED

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**Pro Hac Vice Motion forthcoming*

INTRODUCTION

1. Dauphin County proclaims that Fort Hunter Park “is not open to political activity—by anyone!”

2. For more than 80 years, the Supreme Court has made clear that the First Amendment prohibits the government from banning political activity in public parks.

3. On June 11, 2022, Plaintiffs Kevin Gaughen and David Kocur attempted to collect signatures from their neighbors to place Kocur on the general election ballot for state representative. Gaughen and Kocur selected Fort Hunter Park (the “Park”) for their efforts, a popular public park frequented by many, especially during the warm summer months.

4. But Dauphin County Parks and Recreation Director Anthea Stebbins, flanked by park security, ordered them to stop, declaring that all political activity is banned in Fort Hunter Park.

5. Dauphin County is wrong. “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.” *Carey v. Brown*, 447 U.S. 455, 460 (1980).

6. Nevertheless, Dauphin County claims a provision buried in the property-transfer documents from when the County acquired Fort Hunter Park more than 40 years ago allows the County to prohibit political activity on Park grounds.

7. But the Supreme Court has made clear that the government cannot rely on property-conveyance restrictions to evade the commands of the Constitution. *Evans v. Newton*, 382 U.S. 296, 297 (1966).

8. Gaughen and Kocur sent a letter via counsel advising Dauphin County of this long-standing Supreme Court precedent, expecting the County would quickly recognize the unconstitutionality of its ban on political activity and welcome them back to Fort Hunter Park.

9. But the County refused, insisting Fort Hunter Park is not open to political activity “by anyone.”

10. The First Amendment mandates that public parks be open to everyone for political activity. Gaughen and Kocur bring this lawsuit to protect their First Amendment rights so they can return to Fort Hunter Park and circulate petitions for Keystone Party candidates and discuss the party’s platform and values with Park visitors.

THE PARTIES

Plaintiffs

11. Plaintiff Kevin Gaughen is a United States citizen and a resident of Mechanicsburg, Pennsylvania. Gaughen is a Board Member of the Keystone Party. Formerly, he served as the Executive Director of the Pennsylvania Libertarian Party. After the Libertarian Party's national platform changed in a way that no longer reflected his political views, Gaughen, along with other former Libertarians, formed the Keystone Party as an alternative for like-minded Pennsylvania voters and candidates for public office.

12. Plaintiff David Kocur is a United States citizen and a resident of Harrisburg, Pennsylvania. Kocur was the Keystone Party's 2022 candidate for Pennsylvania House District 104, which covers portions of Dauphin and Lebanon counties. The 2022 election was Kocur's first time running for public office.

13. Gaughen and Kocur are suing because, contrary to the First Amendment, Defendants are preventing them from collecting ballot petition signatures and speaking with residents about the Keystone Party in Fort Hunter Park.

Defendants

14. Defendant Dauphin County is an independent political subdivision of the Commonwealth of Pennsylvania, organized under 16 Pennsylvania Statutes § 101 *et seq.* The Dauphin County Parks and Recreation Department is a department of Dauphin County and enforces the rules and regulations for the operation of Dauphin County's recreational facilities, including Fort Hunter Park. *See* County of Dauphin, PA Ordinance #2-95. Dauphin County maintains an official policy, practice, and decision of prohibiting political activity in Fort Hunter Park.

15. Defendant Anthea Stebbins is the Director of the Dauphin County Parks and Recreation Department. Director Stebbins is an employee of Dauphin County and is responsible for supervising Parks Department staff and implementing County policy.

16. At all times relevant to the Complaint, Director Stebbins was acting under color of state law and is being sued in her individual capacity.

JURISDICTION AND VENUE

17. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and statutory jurisdiction under 28 U.S.C. § 1343 because Plaintiffs' claims arise under the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

18. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because at least one defendant resides within the Harrisburg Division of the Middle District of Pennsylvania.

19. Venue is also proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within the Harrisburg Division of the Middle District of Pennsylvania.

20. Venue is also proper in this judicial district under Local Civil Rule 83.6.1 because the Harrisburg Division of the Middle District of Pennsylvania is the trial court nearest the scene of the principal event giving rise to Plaintiffs' claims.

FACTUAL ALLEGATIONS

Plaintiffs Engage in Political Expression as Part of Pennsylvania's Electoral Process.

21. On June 11, 2022, Gaughen accompanied Kocur to Fort Hunter Park to speak with fellow Pennsylvanians about the Keystone Party and to collect the signatures that Kocur and other Keystone Party candidates needed to appear on the general election ballot.

22. In order to appear on the general election ballot representing a minor political party, Pennsylvania law requires candidates for the state House of Representatives to collect and submit 300 signatures from eligible voters. (25 Pa. Stat. § 2872.1(14); 25 Pa. Stat. § 2872.2; 25 Pa. Stat. § 2911.)

Fort Hunter Park Is a Public Park in Dauphin County.

23. Fort Hunter Park is a 40-acre public park along the Susquehanna River in Harrisburg, Pennsylvania. House District 104 encompasses part of Harrisburg.

24. Fort Hunter Park is part of the Dauphin County Parks and Recreation system.

25. The Dauphin County Parks and Recreation Department is headquartered in Fort Hunter Park.

26. Pursuant to Dauphin County, PA Ordinance #2-95, “All County parks shall be open for public use on a year-round basis, unless otherwise designated.”

27. Fort Hunter Park is open to the public daily from 8:00 a.m. until dusk.

28. The Fort Hunter Park website encourages members of the public to “use the park as a backdrop for your engagement photos and family portraits.”

29. Dauphin County allocates funds to Fort Hunter Park to assist with the operation and maintenance of the Park. For example, on February 23, 2022, the Dauphin County Board of Commissioners approved an allocation of \$150,000 to the Dauphin County Parks and Recreation Department for the design and construction of a playground in Fort Hunter Park.

Defendants Stopped Plaintiffs from Petitioning in Fort Hunter Park.

30. On Saturday, June 11, 2022, the Dauphin County Parks and Recreation Department held its annual “Proudly PA!” event in Fort Hunter Park, featuring music by Pennsylvania artists as well as food and drink from local vendors.

31. Though the “Proudly PA!” event required a ticket, it occupied only a small part of the 40-acre Park, with other areas remaining open to the general public for normal use.

32. On Saturday, June 11, 2022, Gaughen and Kocur arrived at Fort Hunter Park while the “Proudly PA!” event was underway.

33. Gaughen and Kocur stood in an open area of the Park near the event entrance, discussing their petitions and the Keystone Party with other Park visitors.

34. As part of their petitioning, Gaughen and Kocur discussed with Park visitors who Kocur and the other Keystone Party candidates are, what they stand for, what the Keystone Party is, what it stands for, and tried to convince them that Kocur and other Keystone Party candidates were worthy of support and inclusion on the ballot.

35. About an hour into their efforts, a security guard approached Gaughen and Kocur and asked them what they were doing in the Park. Gaughen replied that they were collecting ballot petition signatures and speaking with Park visitors about the Keystone Party.

36. The security guard responded that political activity is banned in Fort Hunter Park.

37. Gaughen politely informed the security guard that the First Amendment guarantees their right to engage in political activity in a public park.

38. The guard left, telling Gaughen and Kocur that he would have to “verify” what Gaughen said with his supervisor.

39. About ten minutes later, a second security guard approached Gaughen and Kocur.

40. The second guard asked Gaughen and Kocur to leave Fort Hunter Park.

41. Gaughen politely told the second security guard the same thing he told the first: the First Amendment guarantees their right to engage in political activity in a public park.

42. The second guard left, telling Gaughen and Kocur that he would discuss the matter with the Director of the Dauphin County Parks and Recreation Department, Director Stebbins. Gaughen and Kocur resumed collecting signatures.

43. About thirty minutes later, Director Stebbins approached Gaughen and Kocur, accompanied by the two security guards.

44. Director Stebbins told Gaughen and Kocur political activity is banned in Fort Hunter Park and ordered them to stop.

45. Director Stebbins handed them a copy of the Indenture conveying Fort Hunter Park to Dauphin County in 1980. (Ex. A, Indenture.)

46. According to the July 8, 1980 Indenture, the non-profit Fort Hunter Foundation conveyed Fort Hunter Park to Dauphin County “in trust, for use for historical, park and recreational purposes in accordance with the terms and conditions” set forth therein in exchange for one dollar, a promise to continue operating the museum on the property, and rent for the maintenance of recreational buildings. (Ex. A at 1.)

Defendants Maintain a Policy Prohibiting All Political Activity in a Public Park.

47. Director Stebbins directed Gaughen’s and Kocur’s attention to pages 11 and 12 of the Indenture and claimed that the provision provides Dauphin County authority to ban political activity in Fort Hunter Park.

48. The provision relied upon by Director Stebbins reads:

No part of the net earnings of this Trust shall inure or be payable to or for the benefit of any individual and no substantial part of the activities of this Trust shall be the

carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of this Trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign of any candidate for public office.

(Ex. A at 11–12.)

49. Instructed by Director Stebbins that Fort Hunter Park prohibits political activity, and asked by Park security to leave because they had been engaging in political activity, Gaughen and Kocur followed the instructions and departed the Park.

50. Had Director Stebbins not intervened on June 11, Gaughen and Kocur would have continued to collect ballot signatures from Park visitors, speak with them about the Keystone Party, and solicit support for Keystone Party candidates and values, and would have returned to the Park on later dates to do the same before and after the November 2022 election.

51. On December 22, 2022, the Keystone Party nominated a candidate for Justice of the Pennsylvania Supreme Court in anticipation of the November 2023 election.

52. In order to appear on the general election ballot for Justice of the Supreme Court representing a minor political party, Pennsylvania

law requires candidates to collect and submit 1,000 signatures. (25 Pa. Stat. § 2872.1(9); 25 Pa. Stat. § 2872.2; 25 Pa. Stat. § 2911.)

53. But for Dauphin County's policy banning political activity in Fort Hunter Park, Gaughen and Kocur would return to the Park to speak to visitors about the Keystone Party, solicit support for the Keystone Party, and collect ballot petition signatures for Keystone Party candidates in the Supreme Court and other races.

54. Solely because of Dauphin County's policy that political activity is banned in Fort Hunter Park and Director Stebbins's enforcement of that policy, neither Gaughen nor Kocur have returned to Fort Hunter Park to engage in political activity since June 11, 2022.

55. Defendants' ban on political activity in Fort Hunter Park and the accompanying order to Gaughen and Kocur to cease petitioning and discussing political matters with Park visitors violated Gaughen's and Kocur's First Amendment rights.

56. On October 13, 2022, Plaintiffs, through undersigned counsel, sent a letter to Defendants describing the events of June 11, 2022, citing the binding authority establishing Plaintiffs' First Amendment right to engage in political activity in a public park, and demanding that Dauphin

County cease enforcing its unconstitutional prohibition on political activity in Fort Hunter Park. (Ex. B, Oct. 13, 2022 Demand Letter.)

57. On October 19, 2022, Defendants responded with a letter from their counsel, confirming that Dauphin County maintains a policy banning political activity in Fort Hunter Park and will continue enforcing the same. (Ex. C, Oct. 19, 2022 Response Letter.)

58. The letter states, “Fort Hunter Park is not open to political activity—by anyone! This has long been the policy of the Dauphin County Commissioners and their Parks and Recreation Department.” (*Id.* at 3.)

INJURY TO PLAINTIFFS

59. Director Stebbins’s actions in prohibiting Gaughen and Kocur from collecting ballot petition signatures and discussing the Keystone Party with Park visitors damaged Gaughen and Kocur by depriving them of their constitutional right to engage in political activity in the traditional public forum of a public park, entitling Gaughen and Kocur to monetary damages.

60. As a direct and proximate result of Defendants’ policy and actions, Plaintiffs have suffered and continue to suffer irreparable injury,

including being deprived of their constitutional right to free speech. Plaintiffs are entitled to prospective injunctive relief.

61. Because of Dauphin County's policy prohibiting political activity in Fort Hunter Park, and Defendant Stebbins's enforcement of that policy, Plaintiffs are unable to return to Fort Hunter Park to speak with fellow Pennsylvanians about the Keystone Party, solicit support for the Party, and gather signatures for Party candidates in future elections.

62. The denial of constitutional rights is an irreparable injury *per se*. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

63. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their First Amendment rights.

64. Without declaratory and injunctive relief from this Court, Defendants' unconstitutional policy and actions will continue and Plaintiffs will suffer irreparable harm indefinitely.

CAUSES OF ACTION

FIRST CLAIM

Violation of First Amendment (Damages)

42 U.S.C. § 1983

(All Plaintiffs against Defendant Stebbins in her individual capacity)

65. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

66. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. Amend. I.

67. Speaking with others about matters addressed by a petition and attempting to persuade them to sign the petition is protected by the free speech clause of the First Amendment.

68. Circulating petitions “involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988).

69. Gathering signatures “involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” *Id.* at 421.

70. Speaking with others about matters of political and social concern is protected by the free speech clause of the First Amendment.

71. Public parks are “traditional” or “quintessential” public forums under the First Amendment. Parks “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.” *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)).

72. Fort Hunter Park is a public park and therefore a traditional public forum.

73. Director Stebbins violated Gaughen’s and Kocur’s First Amendment rights by prohibiting them from gathering ballot signatures and discussing political matters with other Fort Hunter Park visitors.

74. In a traditional public forum, the government may impose only content-neutral time, place, or manner restrictions on First

Amendment activity, provided that the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

75. Prohibiting political activity in Fort Hunter Park constitutes impermissible content discrimination under the First Amendment because the ban targets a particular subject—politics—for unequal treatment.

76. Prohibiting political activity in Fort Hunter Park is not narrowly tailored because it prohibits all political expression and activity in the Park, no matter its manner, location, or duration.

77. There is no compelling state interest in prohibiting political activity in a public park.

78. There are no alternate avenues for Pennsylvanians to engage in political activity in Fort Hunter Park.

79. Using governmental authority to categorically bar political activity in a public park is an obvious constitutional violation.

80. It is clearly established that circulating a petition is “core political speech” where “First Amendment protections” are “at [their] zenith.” *Meyer*, 486 U.S. at 425.

81. It is clearly established that “there cannot be a blanket exclusion of First Amendment activity from a municipality’s open streets, sidewalks, and parks.” *Greer v. Spock*, 424 U.S. 828, 835 (1976).

82. It is clearly established that the government cannot use restrictions imposed by a conveyance of property from private to public hands to evade the commands of the Constitution. *Evans*, 382 U.S. at 297.

83. It is clearly established that the government cannot discriminate against political speech unless necessary to serve a compelling state interest and the action is narrowly tailored to serve that interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

84. At all times relevant, Director Stebbins had fair warning and was or should have been aware that her actions were unconstitutional.

85. As a direct and proximate result of Defendant Stebbins’s actions, Plaintiffs were deprived of their constitutional rights to freedom of speech. As a legal consequence of Defendant Stebbins’s violation of

Plaintiffs' First Amendment rights, Plaintiffs are entitled to damages from Defendant Stebbins in her individual capacity.

86. Director Stebbins's conduct recklessly and callously disregarded and was indifferent to Plaintiffs' rights because she acted with the intent to suppress Plaintiffs' speech. Accordingly, punitive damages are appropriate and necessary to punish Director Stebbins for abridging Plaintiffs' constitutional rights and to deter similar violations in the future.

SECOND CLAIM
***Monell* Claim for Violation of First Amendment**
42 U.S.C. § 1983
(All Plaintiffs against Defendant Dauphin County)

87. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

88. Director Stebbins's actions violated Plaintiffs' constitutional rights for the reasons stated in Claim I.

89. Director Stebbins acted pursuant to an officially promulgated policy, practice, and decision by Dauphin County to prohibit political activity in Fort Hunter Park.

90. On October 13, 2022, Dauphin County confirmed that its official policy, practice, and decision is to prohibit political activity in Fort Hunter Park. (Ex. C.)

91. In the October 13, 2022 letter, Dauphin County confirmed that Director Stebbins’s actions—prohibiting Gaughen and Kocur from engaging in political activity in Fort Hunter Park—were “consistent with clear direction given to her” by the County. (*Id.* at 4.)

92. Because Director Stebbins’s actions constituted the enforcement of an official policy, practice, and decision of Dauphin County, Dauphin County is responsible for Director Stebbins’s constitutional violations under 42 U.S.C. § 1983 pursuant to *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

93. As a direct and proximate result of Dauphin County’s actions, Plaintiffs were deprived of their constitutional rights to freedom of speech. As a legal consequence of Dauphin County’s violation of Plaintiffs’ First Amendment rights, Plaintiffs are entitled to damages from Dauphin County.

THIRD CLAIM
Violation of First Amendment (Injunctive and Declaratory
Relief)
42 U.S.C. § 1983
(All Plaintiffs against Defendant Dauphin County)

94. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

95. Dauphin County enforces an official policy, practice, and decision of prohibiting political activity in Fort Hunter Park, as evidenced by Director Stebbins barring Gaughen and Kocur from continuing to circulate a political petition and discuss the Keystone Party with Park visitors on June 11, 2022.

96. Dauphin County's official policy, practice, and decision of prohibiting political activity in Fort Hunter Park constitutes an unlawful abridgment of the First Amendment right to freedom of speech as explained in Claim I.

97. Dauphin County's policy, practice, and decision of prohibiting political activity in Fort Hunter Park constitutes an ongoing abridgment of Plaintiffs' First Amendment free speech rights as explained in Claim I.

98. Dauphin County's policies, practices, and decisions constitute unlawful content discrimination under the First Amendment for the reasons stated in Claim I.

99. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that Dauphin County's practice, policy, and decision of prohibiting political activity in Fort Hunter Park constitutes unlawful suppression of Plaintiffs' First Amendment right to freedom of speech.

100. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that Dauphin County's practice, policy, and decision of prohibiting political activity in Fort Hunter Park constitutes unlawful content discrimination under the First Amendment.

101. As a direct and proximate result of Defendants' policy and actions, Plaintiffs have suffered and continue to suffer irreparable injury, including being deprived of their constitutional rights to free speech. Plaintiffs are entitled to prospective injunctive relief against Defendant Dauphin County.

102. But for Defendant Dauphin County's policy prohibiting political activity in Fort Hunter Park, Plaintiffs would return to Fort Hunter Park to speak to fellow Pennsylvanians about the Keystone

Party, solicit support for the Keystone Party, and gather signatures for Keystone Party candidates in future elections.

103. Without declaratory and injunctive relief, Dauphin County's suppression of Plaintiffs' First Amendment right to peacefully petition and discuss political matters in a public park will continue and Plaintiffs will suffer per se irreparable harm indefinitely.

104. Without declaratory and injunctive relief, Dauphin County's content discrimination against Plaintiffs' speech will continue and Plaintiffs will suffer per se irreparable harm indefinitely.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Gaughen and Kocur respectfully request that this Court enter judgment against Defendants and issue the following forms of relief:

A. Enter a preliminary and permanent injunction enjoining Defendants from enforcing a ban on political activity in Fort Hunter Park;

B. Declare that Defendants' ban on political activity in Fort Hunter Park violates the First Amendment;

- C. Award Plaintiffs compensatory (Claims I and II) and punitive (Claim I) damages;
- D. Award Plaintiffs their attorney's fees under 42 U.S.C. § 1988;
- E. Award Plaintiffs their costs; and
- F. Award such other relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

In compliance with Federal Rule of Civil Procedure 38, Plaintiffs demand a trial by jury on all issues so triable.

DATED: January 16, 2023

Respectfully submitted,

/s/ Jeffrey D. Zeman

JEFFREY D. ZEMAN

PA Bar No. 328570

CONOR T. FITZPATRICK*

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Attorneys for Plaintiff

**Pro Hac Vice Motion forthcoming*

VERIFICATION OF KEVIN GAUGHEN

Pursuant to 28 U.S.C. § 1746, I, KEVIN GAUGHEN, declare as follows:

1. I am a Plaintiff in the present case and a citizen of the United States of America.
2. I have read the foregoing Verified Complaint.
3. I have personal knowledge of the factual allegations in paragraphs 1, 3, 4, 6, 8–11, 13, 21, 23, 30–51, 53, 54, 56–58, 60, 61, 91, and 102 of the Verified Complaint and know them to be true.
4. I verify under penalty of perjury that the foregoing is true and correct.

Executed on January 16, 2023



A handwritten signature in black ink, appearing to read 'K. Gaughen', is written over a solid horizontal line.


KEVIN GAUGHEN

VERIFICATION OF DAVID KOCUR

Pursuant to 28 U.S.C. § 1746, I, DAVID KOCUR, declare as follows:

1. I am a Plaintiff in the present case and a citizen of the United States of America.
2. I have read the foregoing Verified Complaint.
3. I have personal knowledge of the factual allegations in paragraphs 1, 3, 4, 6, 8–10, 12, 13, 21, 23, 30–51, 53, 54, 56–58, 60, 61, 91, and 102 of the Verified Complaint and know them to be true.
4. I verify under penalty of perjury that the foregoing is true and correct.

Executed on January 15, 2023

A handwritten signature in blue ink, appearing to read "David Kocur", is written over a horizontal line.

DAVID KOCUR

Verified Complaint - Exhibit List

Gaughen, et al. v. Dauphin County, et al.
Middle District of Pennsylvania

Exhibit	Description
A	Indenture conveying Fort Hunter Park from Fort Hunter Foundation to Dauphin County
B	October 13, 2022 Demand Letter from Plaintiffs' Counsel
C	October 19, 2022 Response Letter from Defendants' Counsel

Gaughen, et al. v. Dauphin County, et al.

Exhibit A
to Verified Complaint for
Civil Rights Violations

10878
Re-recording
RECEIVED
RECORDER'S OFFICE
OCT 7 3 17 PM '80
DAUPHIN COUNTY
PENNA.
INDENTURE

735/
RECEIVED
RECORDER'S OFFICE
JUL 21 4 13 PM '80
DAUPHIN COUNTY
PENNA.

This Indenture, made this 8th day of
July, ¹⁹⁸⁰1979, by and between the Fort Hunter
Foundation (hereinafter called "Settlor") and the County of
Dauphin (hereinafter called "County"), witnesseth that:

WHEREAS, it is the intention of the parties hereto
that the real estate and personal property to be transferred
under the terms and conditions of this Indenture by Settlor to
County shall be held by County in perpetuity to be used for
park, recreational and historical purposes so long as the same
shall be used in accordance with the terms of this Indenture,
and in accordance with the purposes and restrictions set forth
in the Charter of the Fort Hunter Foundation, a copy of which is
attached hereto as Exhibit "A".

NOW, THEREFORE, for and in consideration of the sum of
One (\$1.00) Dollar and the undertaking of the County to continue
the operations of the museum in accordance with the Charter
of Fort Hunter and to supply personnel, materials and
maintenance; and to pay rental under conditions hereinafter
stated on Page 7 of this Indenture, Settlor hereby grants and
conveys to County, in trust, for use for historical, park and
recreational purposes in accordance with the terms and conditions
of this Indenture all that certain tract or parcel of land sit-
uate in Susquehanna Township, Dauphin County, Pennsylvania, known

as the Fort Hunter Museum property, more particularly described in Exhibit "B" hereto.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said Settlor, its successors and assigns, in law, equity or otherwise of, in, and to the same and every part thereof.

TO HAVE AND TO HOLD the above described premises with the appurtenances under the said County of Dauphin, its successors and assigns, for use for historical, park and recreational purposes in accordance with the terms and the conditions of this Indenture.

Settlor also transfers and grants the personal property set forth on Exhibit "C" hereto and all of the tangible personal property on the premises to the County of Dauphin as Trustee, in trust nevertheless, to be managed, invested and expended in accordance with the terms of this Indenture for the uses and purposes set forth herein.

County, by its acceptance of the above, grants and by the execution of this instrument, agrees to abide by the terms and conditions of this Indenture and to the appointment of trustees to manage the Trusts herein set forth in accordance with the terms of this instrument.

County has inspected the property and agrees to accept the same in its present condition without representation or warranty of any kind from Settlor as to the present condition of the premises.

Legal title to the real estate and personal property shall be held by the County of Dauphin as Trustee, but the management of the said premises and the personal property herein conveyed shall be vested in a Board of Trustees to be appointed as follows:

Three (3) trustees shall be selected by the County from a list of not less than five (5) names submitted to it by the Friends of Fort Hunter, Inc., provided that in the event no trustee be nominated by the Friends of Fort Hunter, Inc. within forty-five (45) days of written request for the same from the County, then the County shall be free to designate persons to act as trustees free from this restriction.

Three (3) trustees shall be selected by the County Commissioners of the County of Dauphin, or their successors, or designees.

The seventh member of the Board of Trustees shall be selected by the Trustees so selected and shall act as Chairman and shall serve as Chairman not more than two (2) terms.

The terms of the Trustees shall be for a period of three (3) years or until their successors are elected. Subsequent Trustees to replace Trustees nominated by the Friends of Fort Hunter, Inc. shall be selected by the County from a slate of two more nominees than the number of Trustees for such positions to be selected. In the event the County fails to appoint a Trustee within ninety (90) days of the occurrence of a vacancy in office, the majority of the remaining Trustees shall be entitled to appoint a person to fill the vacancy under the same terms and conditions as would have been required of the County to fill such vacancy. The first Trustees in each group shall be selected for one, two and three year terms and those selected for one year terms may serve two additional three year terms. Otherwise, Trustees shall not serve for more than two consecutive terms.

The corpus of the personal property in the Trust shall be maintained as a fund in perpetuity and only the income thereof shall be used for the purposes herein set forth. The following shall be treated as corpus and not as income:

- (1) All dividends declared upon corporate stock payable otherwise than in cash.

(2) All profits realized from corporate stock either upon its sale or upon the sale or dissolution of the issuing corporation, or otherwise, irrespective of the form or character of such profits, whether in cash, securities, or otherwise, howsoever.

(3) All shares of stock of whatsoever class or character received by the Trustee in connection with or as part of any reorganization or recapitalization of any corporation or any reclassification of the capital stock of any corporation.

(4) Dividends or receipts from regulated investment companies or any other company or corporation which represent capital gains realized from the sale of securities or property by such company or corporation.

(5) The proceeds from any sale or condemnation of any part of the real estate herein conveyed, but this provision shall not be construed as a right in the Trustees to sell any of the real estate without approval of Court.

The Trustees shall make such rules and regulations as they deem appropriate for the use of said premises, having in mind that the premises have been transferred for use primarily for historical and museum purposes appropriate for the site, and such rules and regulations shall be in conformity with the regulations applicable to Fort Hunter's structures and foundations resulting from its being registered in the National Registry, and in conformity with the regulations of the Pennsylvania Historical Museum Commission by reason of its official recognition of Fort Hunter as a facility of historical significance and in conformity with such rules and regulations as the County of Dauphin may create for the regulation of the conduct of the public at such or similar facilities, including rules or regulations as to conduct of the public which may be promulgated by the Parks and Recreation Department of the County of Dauphin, or any succeeding agency of the County in charge of park and recreational or historical facilities relating to such conduct.

It is further understood and agreed that so long as it shall stand or be restorable, the mansion house and the lands in the premises shall be devoted to the purposes of a museum to display and preserve its architecture and appropriate interior furnishings (of a period of 1745 to 1855) to the public and that

such use and object is the primary purpose of the trusts hereby established. In addition to the primary purpose, it is the intent of this Indenture that the tavern, spring house, ice house and barns be maintained at least as to outward appearances insofar as possible, and expenditures for such purposes may be made by the Trustees.

Should the County occupy buildings, or portions thereof, east of River Road for park and recreation purposes, a reasonable rental shall be paid into the operating funds of the Trustees sufficient to carry the maintenance and operating costs for such buildings.

The Trustees shall manage such funds as come into their hands under this Indenture or by subsequent gifts or bequests by Settlor or others for Fort Hunter, and shall have all the power and duties of Trustees relating to such funds provided that should the County of Dauphin create or designate a public foundation for the investment and management of funds of the County for park, recreational or historical purposes, the Trustees shall turn full control of the management of such funds, and in such event, the Trustees herein provided shall, as to such funds, control only the use and expenditure of the income therefrom.

The Trustees shall review annually plans for the development, restoration and use of the premises, and determine priorities and expenditures of Trust funds in view of funds available for historical and museum purposes and make final decisions on the development, restoration and purposes to be carried out with such funds.

EX 16071172

~~BOOK 140 PAGE 89~~

The County and the Trustees agree to keep the premises and the buildings conveyed hereby in good repair and condition fit for museum and recreation purposes, and that the quality of maintenance shall not be less than that given to the contiguous land conveyed to the County.

In the event the Friends of Fort Hunter, Inc. or any other person shall believe that the Trustees or the County have failed to comply with the provisions of this Indenture or the purposes and restrictions of the Charter of the Fort Hunter Foundation, they may petition the Orphans' Court of Dauphin County to require the County or the Trustees to meet the terms and conditions of the Indenture and/or Charter; and County, by acceptance of this Trust, agrees to the jurisdiction of said Court over the properties herein conveyed as having been dedicated to charitable purposes, and in the event it is found that this Indenture has been breached and/or that the terms and conditions of this Indenture and/or the Charter cannot be complied with, the Court may dispose of the properties herein conveyed in such manner as it deems appropriate under the terms and conditions of this Indenture to carry out its intent provided, however, that any personal property remaining in the hands of the Trustees shall be transferred to the recipient of the premises provided that it is then subject to continued use for historical and/or museum purposes at the time of such Order. No action taken by the County or the Trustees shall be deemed a violation of this Indenture or of the purposes or restrictions of the Charter of the Fort Hunter Foundation if such action is taken with the written consent of the Friends of Fort Hunter, Inc.

The County of Dauphin agrees to recognize the Friends of Fort Hunter, Inc. as a supporting organization in the operation of the site and particularly the museum, and agrees not to create another voluntary citizens group for support of the museum without the written consent of the Friends of Fort Hunter, Inc. The County agrees that to obtain funding support from the Friends of Fort Hunter, Inc. for projects to be financed by them, the County shall request funds for a particular project and shall certify to the Friends of Fort Hunter, Inc. that the project could not commence or continue without their support. Upon receipt of such certification, the Friends of Fort Hunter, Inc. may make payments for such projects.

The County herewith requests funds for the following traditional projects and activities. These projects could not commence or continue without the support of the Friends of Fort Hunter, Inc.

- (1) Opening Day Ceremonies
- (2) Membership Annual Meeting
- (3) Walking Tour and Brunch
- (4) Fort Hunter Day
- (5) Autumn Candlelight Dinner
- (6) Christmas at Fort Hunter

or such changes therein as may be agreed to by the County and the Friends of Fort Hunter, Inc. The Friends of Fort Hunter, Inc. shall sponsor these traditional projects, and/or others as may be agreed to from time to time.

The Friends of Fort Hunter, Inc. shall be asked by the County to provide volunteer services at the museum and to develop innovative and historical projects and programs for the museum subject to approval by the Trustees. The Friends of Fort Hunter, Inc. may initiate plans for restoration or programs; secure estimates and present plans and estimates to the Trustees for their approval or rejection. In all events, their activities upon the premises shall be subject to all rules and regulations promulgated by the Trustees in accordance with this Indenture. The Trustees shall have authority to permit such admissions fees as they deem appropriate to be collected and retained by the Friends of Fort Hunter, Inc.

The Trustees shall maintain the present museum (originally the home of Archibald McAllister), and the structures appurtenant to it on both sides of River Road as public historical buildings, but may permit other uses and renovations of the tavern presently containing apartments, the spring house, the stone barn, the large barn on River Road, and the foundation on the south corner of the large barn; provided that any remodeling or restoration of the same shall maintain the historical character of these buildings to outward appearance and buildings used for

BOOK 160 PAGE 175

non-historical purposes shall bear signs identifying their historical significance. The bed of the Pennsylvania Canal on the site shall be maintained for its historical importance, and, if funds permit, shall be restored to its original character.

The County of Dauphin will adopt by appropriate resolution the provisions of this Indenture to utilize the site in perpetuity for park, recreational and historical purposes, subject to the right of re-entry for condition broken herein set forth. As part of its resolution, the County shall adopt the following:

"In view of the foresight, dedication and generosity of Margaret Wister Meigs in preserving the Fort Hunter property, the facility shall be named the 'Fort Hunter Park maintained in Memory of Margaret Wister Meigs', and it is agreed that the sculpture designed and executed by the internationally known artist and sculptor, Henry Varnum Poor, shall be preserved in perpetuity on the river side of River Road as a memorial to Margaret Wister Meigs."

The net income from the corpus of the Trust of personal property shall be currently distributable by the Trustees for the purposes herein set forth.

No part of the net earnings of this Trust shall inure or be payable to or for the benefit of any individual and no substantial part of the activities of this Trust shall be the

carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of this Trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign of any candidate for public office.

Notwithstanding any other provision of this Indenture, the Trust shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

Notwithstanding any other provision of this Indenture, the Trust shall not engage in any other activities which would give rise to a tax imposed under Sections 4941, 4943, 4944 or 4945 if such Trust were a private foundation.

Notwithstanding any other provision of this Indenture, upon the dissolution or termination of the Trust for any reason the Trustees shall, after making provision for all liabilities of the Trust dispose of all of the assets of the Trust Estate

exclusively for the purpose of the Trust to the Friends of Fort Hunter, Inc. or if they no longer exist, in such manner or to such organization or organizations willing to undertake to maintain and preserve the property organized and operated exclusively for charitable, historical, educational, and recreational or park purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) and which are described in Section 170(c)(2) and Section 509(a) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Trustees shall determine. Any of the assets not so disposed of shall be disposed of by the Court of Common Pleas of Dauphin County exclusively for such purposes or to such organization or organizations as said Court shall determine which are organized and operated exclusively for such purposes.

The County is an organization described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1954, and, therefore, it is assumed that the project described in the Indenture is exempt from Federal taxation, can be the recipient of the deductible gifts under Section 170(a), and not considered a private foundation under Section 509 because it organized pursuant to the trust powers of the County. In the alternative,

the Trust, itself, as a supporting organization of the County is intended to qualify as an organization described in Section 509(a)(3). The Indenture is also intended to set forth the requisite relationship between the County and the Friends of Fort Hunter, Inc., so that the latter, as a supporting organization of the County, is one described in Section 509(a)(3).

The Indenture may be amended by instrument signed and sealed by five (5) or more Trustees, acknowledged by one of its members and accepted by the Trustees if such an amendment is deemed necessary by the Trustees to conduct the affairs of the Trust in a manner which conforms to the provisions of Section 501(c)(3), Section 509(a)(3) or Section 170(a) of the Internal Revenue Code as now in force or hereafter amended. All instruments amending the Indenture shall be attached to the executed originals held by the Trustees.

The Trustees shall hold and manage the Trust Estate during the existence of this Trust upon the following terms and conditions with the following persons and authorities:

A. To take, hold and retain all or part of the Trust hereby created in the form in which it may be acquired as long as it deems advisable and to receive all the income, increments, rents and profits therefrom;

B. To sell, exchange, partition, lease or otherwise dispose of any property or part thereof, real or personal, which may at any time form part of this Trust Estate (except the real estate herein conveyed) at public or private sale for the purposes

and upon the terms, including sales on credit with or without security, in such manner and at such prices as it may determine, including the right to lease real estate (except for the real estate herein conveyed) for periods in excess of five years and for a term expiring after the termination of the Trust. In the event of a sale, exchange, partition or lease of any of the property of this Trust Estate (except for the real estate herein conveyed) there shall be no liability on the part of the purchaser or purchasers to see to the application of the purchase money, but the same shall be held and disposed of by such purchaser or purchasers, free and clear of any of the provisions of any trust created hereby;

C. To continue any investment which may form a part of this Trust Estate or to invest or reinvest the same in any property, real or personal, of any kind or nature, including stocks, bonds, mortgages, and other securities without being limited or restricted to investments as now or may hereafter be prescribed for Trustee by the laws of the Commonwealth of Pennsylvania or any other state;

D. To cause securities which may from time to time comprise any part of this Trust Estate to be registered in the name of the County of Dauphin, Trustee and the County of Dauphin by acceptance of this Trust hereby irrevocably appoints the Trustees under this Indenture as attorneys-in-fact to transfer such securities on its behalf for the purposes of the Trust, without liability on the part of any transfer agent or purchaser

in dealing with the Trustees herein appointed to deal with such securities;

E. To retain the principal or corpus of any part thereof of this Trust Estate in the form of cash;

F. To vote, in respect to any securities which may at any time form a part of this Trust Estate, upon any proposition or election at any meeting and to grant proxies, discretionary or otherwise; to vote at any such meeting; to join in or become a part of any reorganization, readjustment, merger, voting trust, consolidation or exchange and to deposit any such securities with any committee, depository, trustee or otherwise and to pay out of this Trust Estate any fees, expenses, and assessments incurred in connection therewith; to exercise conversion, subscription or other rights, or to sell or abandon such rights and to receive and hold any new securities issued as a result of such reorganization, readjustment, merger, voting trust, consolidation, exchange or exercise of subscription, conversion or other rights; and generally take all action in respect to any such securities as it might or could do as absolute owner thereof;

G. To divide or distribute, whenever it is required or permitted, this Trust Estate and to make such division or distribution in kind or in money or partly in kind and partly in money, and that for such purposes the judgment of the Trustees as to the value of the different items shall be conclusive and final upon the beneficiaries;

H. To determine, in connection with making investments, whether to amortize premiums in whole or in part;

I. To engage attorneys, investment counsel, accountants, agents, and such other persons as they may deem advisable in the administration of the Trust created hereby and to make such payments therefor as they may deem reasonable and to charge the expenses thereof to income or principal as they may determine and to delegate to such persons any discretion which they may deem proper. The Trustees shall not be liable for any negligence, omission, or wrongdoing of such counsel or agents, providing reasonable care was exercised in their selection;

J. To make reports at least annually to the County and the Friends of Fort Hunter, Inc. setting forth a description of the assets of the Trust and the report to the County shall include a detailed list of the assets and the income produced by such assets, to assist the County in assuring that the Trust

has invested its endowment in assets producing a reasonable rate of return (taking appreciation into account) and has not engaged in any activity which would give rise to liability for a tax imposed under Section 4941, 4943, 4944 or 4945 if the Trust were a private foundation.

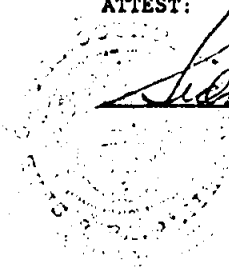


ATTEST:

Ardena V. McKinnon
Secretary

FORT HUNTER FOUNDATION

By *J. Wister Meigs*



ATTEST:

Leroy C. Lease

COUNTY OF DAUPHIN

By *John E. Murrich*

Norman P. Heltman
Stephen O'Leary

Commissioners

Gaughen, et al. v. Dauphin County, et al.

Exhibit B
to Verified Complaint for
Civil Rights Violations



FIRE

Foundation for Individual
Rights and Expression

October 13, 2022

Sent Via FedEx Overnight Shipping and Email

Mike Pries, Dauphin County Board of Commissioners Chairman
Chad Saylor, Dauphin County Board of Commissioners Vice Chairman
George P. Hartwick, III, Dauphin County Board of Commissioners Secretary
Dauphin County Commissioners Office
2 South Second Street, 4th Floor
Harrisburg, PA 17101
mpries@dauphinc.org
csaylor@dauphinc.org
ghartwick@dauphinc.org

Re: Prohibition on Political Activity in Fort Hunter Park

Dear Commissioners:

The Foundation for Individual Rights and Expression (FIRE)¹ is deeply concerned by a recent incident in which Dauphin County Parks and Recreation Director Anthea Stebbins prohibited Pennsylvanians, including our clients Kevin Gaughen and Dave Kocur, from peacefully exercising their core First Amendment rights in Fort Hunter Park.

Mr. Gaughen is a board member of Pennsylvania's Keystone Party, a newly formed political party. Mr. Kocur is the Keystone Party's candidate for Pennsylvania House District 104. On Saturday, June 11, 2022, Mr. Gaughen and Mr. Kocur arrived at Fort Hunter Park intending to collect signatures to place Mr. Kocur on the ballot for November's general election. Two security guards approached Mr. Gaughen and Mr. Kocur and instructed them to leave the park because they were engaging in "political" activity. Mr. Gaughen and Mr. Kocur respectfully declined to leave, citing their First Amendment right to peacefully engage in political speech and petition activity in a public park. But Director Stebbins arrived and ordered them to cease collecting signatures, telling the pair that "no political activity" is permitted in Fort Hunter Park.

¹ FIRE is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the essential qualities of liberty.

Commissioners Pries, Saylor, and Hartwick, III

Oct. 13, 2022

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Director Stebbins’s actions violated the First Amendment. The Supreme Court has clearly 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.’” *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Ed. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983)). “[T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988). Mr. Gaughen and Mr. Kocur had every right to be in a public park on a Saturday peacefully collecting signatures for their political cause.

In ejecting our clients from the park, Director Stebbins pointed to language in the indenture conveying the park in trust to Dauphin County as purportedly banning political activity in the park. Director Stebbins is wrong. The indenture provides in pertinent part on pages 11–12:

No part of the net earnings of this Trust shall inure or be payable to or for the benefit of any individual and no substantial part of the activities of this Trust shall be the carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of this Trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign of any candidate for public office.²

By its plain text, the indenture prohibits the *Trust* from engaging in political activity (unsurprising, considering the Trust is managed by a 501(c)(3) organization). It does not prohibit *the public* from using the park to peacefully petition their neighbors.

Even if Director Stebbins were interpreting the indenture correctly, her actions still violate the First Amendment. The Supreme Court long ago made clear that the government may not rely on property conveyance restrictions to evade the commands of the Constitution. *Evans v. Newton*, 382 U.S. 296, 297 (1966) (holding the Fourteenth Amendment barred enforcement of a “for white people only” condition in a will devising property to the government for use as a park); *see also Marsh v. Alabama*, 326 U.S. 501, 506 (1946) (“The more an owner, for his

² Emphasis added. A copy of the indenture is enclosed.

Commissioners Pries, Saylor, and Hartwick, III

Oct. 13, 2022

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advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it”).

Dauphin County’s prohibition on political activity in Fort Hunter Park is an ongoing violation of our clients’ First Amendment right to peacefully engage in political activity in a public park. At Director Stebbins’s instruction, Mr. Gaughen and Mr. Kocur have not returned to the park to engage in political activity. They would, however, like to return to Fort Hunter Park to solicit support for the Keystone Party before and after the November general election. Unless and until Dauphin County ceases this unconstitutional abridgment of Pennsylvanians’ First Amendment rights, they cannot.

Please provide confirmation no later than the close of business on Wednesday, October 19, 2022, that Dauphin County has ceased enforcing its prohibition on engaging in political activity inside Fort Hunter Park. If we do not receive such confirmation, FIRE will commence litigation and seek the full array of remedies including punitive damages and attorney’s fees.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me with any questions.

Sincerely,



Conor T. Fitzpatrick*

Attorney

Jeffrey D. Zeman**

Staff Attorney

FOUNDATION FOR INDIVIDUAL RIGHTS

AND EXPRESSION

510 Walnut Street, Suite 1250

Philadelphia, PA 19106

Tel: (215) 717-3473

conor.fitzpatrick@thefire.org

jeff.zeman@thefire.org

**Member of the Michigan bar.*

***Member of the Pennsylvania bar.*

Commissioners Pries, Saylor, and Hartwick, III

Oct. 13, 2022

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cc: Joseph A. Curcillo, III, Esq., Chief Solicitor, Dauphin County Solicitor's Office, *via* FedEx Overnight and email to jcurcillo@dauphinc.org

Anthea Stebbins, Director Dauphin County Parks and Recreation Department, *via* FedEx Overnight and email to astebbins@dauphincounty.gov

Encl.

Gaughen, et al. v. Dauphin County, et al.

Exhibit C
to Verified Complaint for
Civil Rights Violations

Board of Commissioners

MIKE PRIES, Chairman
CHAD SAYLOR, Vice Chairman
GEORGE P. HARTWICK III, Secretary

DAUPHIN COUNTY
SOLICITOR'S OFFICE



DAUPHIN COUNTY
PENNSYLVANIA

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Solicitor
JOSEPH A. CURCILLO III, ESQ.

Assistant Solicitors
FREDRICK W. LIGHTY, ESQ.
GUY P. BENEVENTANO, ESQ.
TUCKER R. HULL, ESQ.

October 19, 2022

Via Email and Regular Mail

Conor T. Fitzpatrick, Esq.
Jeffrey D. Zeman, Esq.
Foundation for Individual Rights and Expression
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

RE: Fort Hunter Park

Gentlemen:

By letter dated October 13, 2022, you wrote to the Dauphin County Commissioners concerning the use of Fort Hunter Park. Specifically, your letter begins as follows: “The Foundation for Individual Rights and Expression (FIRE) is deeply concerned by a recent incident in which Dauphin County Parks and Recreation Director Anthea Stebbins prohibited Pennsylvanians, including our clients Kevin Gaughen and Dave Kocur, from peacefully exercising their core First Amendment rights * * * .” (Footnote omitted.)

At the direction of our client, the Dauphin County Commissioners, the Solicitor’s Office has undertaken a review of the relevant facts and the sum and substance of your letter. Please consider this correspondence to be the county’s official response.

You state that “[o]n Saturday June 11, 2022, Mr. Gaughen and Mr. Kocur arrived at Fort Hunter Park intending to collect signatures to place Mr. Kocur on the ballot for November’s general election.” However, “[t]wo security guards approached Mr. Gaughen and Mr. Kocur and instructed them to leave the park because they were engaging in “political” activity”. (Internal quotation marks included.) You then add: “* * * Director Stebbins arrived and ordered [Gaughen

and Kocur] to cease collecting signatures, telling the pair that “no political activity” is permitted in Fort Hunter Park.” (Internal quotation marks included.)

On the basis of the foregoing facts, you accuse Director Stebbins of violating Gaughen and Kocur’s First Amendment rights. In support of the accusation, you cite three decisions of the U.S. Supreme Court: (1) Meyer v. Grant, 108 S. Ct. 1886 (1988); (2) Perry Education Assn. v. Perry Local Educators’ Assn., et al., 103 S. Ct. 948 (1983); and (3) Pleasant Grove City, Utah v. Summum, 129 S. Ct. 1125 (2009). Each case, in its own way, is inapposite.

You correctly cite Meyer v. Grant for the general proposition that “* * * [t]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech.” 108 S. Ct. at 1892. (Internal quotation marks and footnote omitted.) However, the Court’s reference to a “petition” involved a Colorado ballot initiative – not a candidate petition – and the case’s specific holding (i.e., the state constitution’s prohibition against “paying” circulators violates the First Amendment) has nothing at all to do with Fort Hunter Park.

Likewise you cite Pleasant Grove City in support of your argument even though that case – involving the placement of a permanent monument in a public park – dealt with **government speech**, and not with restrictions placed on government by the Free Speech Clause.

In fact, your reliance upon Pleasant Grove City is most inappropriate because your use of Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, *supra*, is completely taken out of context. Specifically, you use Pleasant Grove City, quoting Perry Educ. Ass’n, for the general proposition that the public retains free speech rights in 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.” 103 S. Ct. at 954-955. (Internal quotation marks and citation omitted.) But you completely ignore Justice White’s clear, unequivocal admonition that “[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated **differ depending on the character of the property at issue.**” (Emphasis added.) 103 S. Ct. at 954.

By ignoring Justice White’s admonition, you create the erroneous impression that Perry supports your claims, whereas Justice White is actually acknowledging that local circumstances and the “character” of the property (e.g., the deed restriction on the political use of Fort Hunter Park) will determine what limits can be constitutionally placed on access to public property.

You also completely ignore Perry’s clear reaffirmation of the principle that “[t]he state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” 103 S. Ct. at 955. Given the tone of your letter and the threat you make, your failure to address that settled principle of law is a point that really must be discussed.

Perry is an Indiana case involving a union's challenge to certain collective bargaining provisions, whereby the school district granted the "exclusive" bargaining representative "exclusive" access to teacher mailboxes and the interschool mail system. It has nothing whatsoever to do with what happened last summer at Fort Hunter.

That said, in addition to the point I've already made about Perry's acknowledgment of the importance of local circumstances (i.e., the character of the property), there is more language in Justice White's opinion that essentially supports the county's position in the dispute at hand. I am referring to this:

Public property which is not by tradition or designation a forum for public communication is governed by different standards. We have recognized that the First Amendment does not guarantee access to property simply because it is owned or controlled by the government. In addition to time, place, and manner regulations, **the state may reserve the forum for its intended purposes, communicative or otherwise**, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. **As we have stated on several occasions, the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.** (Emphasis added; internal quotation marks and citations omitted.)

Perry Educ. Ass'n, supra, 103 S. Ct. at 955.

Given Fort Hunter's history, a history of which your letter evinces some awareness, it is frankly irresponsible advocacy to distort Perry in support of your accusation without acknowledging Justice White's admonitions, and then attempting to draw some reasonable distinctions. Instead, your letter leaves a casual reader with an inaccurate impression of what the Court did and said in Perry.

For the reasons set forth in the Indenture, Fort Hunter Park is not open to political activity – by anyone! This has long been the policy of the Dauphin County Commissioners and their Parks and Recreation Department. The county's policy will not change in response to the threat made in your letter.

Finally, mention must be made of FIRE's treatment of Anthea Stebbins, the county's Director of Parks and Recreation. In addition to your letter's allegations against her, I have reviewed an email message and a voice message sent to Director Stebbins on October 13th.

In the email message, Robert Becker of FIRE wrote: “Very disappointed a public servant, whom [sic] is sworn to uphold the U.S. Constitution and the PA Constitution, does not know the rights within each Constitution.”

The voice message is worse. As accurately transcribed, a FIRE supporter said this:

Hello, miss Stebbins, I’m very disappointed that you seem to believe that the freedom of speech. [sic] The first amendment doesn’t apply in Dauphin county Parks [sic] and doesn’t apply to you [,] that you can demand people to stop talking politics, and a public forum [,] shame on you [,] resign your job. Thank you.

Anthea Stebbins is a valued county employee and a respected department director. She follows the law at all times, and her actions last summer are consistent with clear direction given to her. You and your representatives score no points with the Dauphin County Commissioners or the Solicitor’s Office by unfairly attacking and belittling a fine public servant.

In conclusion, the Dauphin County Commissioners take a backseat to no one in their support of the U.S. Constitution and its Bill of Rights, including the First Amendment. The county’s policy against political activity at Fort Hunter Park is a reasonable time, place, and manner restriction based upon the terms of the Indenture (i.e., the character of the property) and the time-honored tradition against such activity at the park. No one at Dauphin County is attempting to silence FIRE. You have ample opportunities at other places, including other county property, to exercise your constitutional rights.

Thank you for your attention to this letter.

Sincerely,



Guy P. Beneventano

cc: Joseph A. Curcillo, III, Esq., Chief Solicitor

GPB/db