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November 5, 2009

## OPEN LETTER CONCERNING FIRST AMENDMENT VIOLATIONS

by fax 504-658-5775 and U.S. Mail  
New Orleans Police Department  
Superintendent Warren Riley  
715 S. Broad Street  
New Orleans, LA 70119

Re: NOPD Interruption of Peaceful Demonstrations at 240 Bourbon  
Street on Friday, October 23 and Thursday, October 29, 2009

Dear Mr. Riley:

On Friday, October 23 and Thursday, October 29, 2009, members of the New Orleans Police Department interfered with peaceful demonstrations outside of Tony Moran's Restaurant, located at 240 Bourbon Street. Because police conduct during these demonstrations impermissibly restricted the demonstrators' free speech rights and appears to be part of a pattern of behavior by the department, we recommend that your officers receive additional training in First Amendment rights, perhaps with the assistance of an expert in the field.

Prior to the demonstration that occurred on October 23, the protestors sought permits for the planned picketing and leafleting. Upon being told that none were required, they informed the NOPD of the specifics of their planned picketing and leafleting activity, to take place outside of Tony Moran's on a block of Bourbon Street. They were informed that their plans were acceptable so long as they kept moving.<sup>1</sup>

Despite these efforts, on October 23 officers arrived at the demonstration and threatened to arrest the picketers, who were moving as instructed, in front of the restaurant, picket signs and leaflets in hand. Movement on the sidewalks and in the street, which was closed off to vehicular traffic, was not impeded by their activity. One officer even went as far as to say that it would not matter if they were actually breaking a law, since he could arrest them just for standing on a sidewalk and cite them for obstructing a public passage.<sup>2</sup>

On October 29, officers were waiting for the demonstrators when they arrived. The demonstrators were again holding signs and distributing leaflets outside of Tony Moran's Restaurant. They were again moving so as not to obstruct any movement on the street or sidewalk. Forty-five minutes into the event, they were told that they were not allowed to distribute leaflets. They were informed that if they were to do so, they would be cited for distributing leaflets in violation of New Orleans Municipal Ordinance Sec. 110-222.

<sup>1</sup> (so as not to obstruct any public passageway. New Orleans Municipal Code at Sec. 54-401).

<sup>2</sup> Id.

(2)


On both of these occasions, police impermissibly interfered with the demonstrators' exercise of their First Amendment rights. The First Amendment protects peaceful demonstrations<sup>3</sup> in public places.<sup>4</sup> It also protects leafleting and picketing, especially on public sidewalks.<sup>5</sup> First Amendment rights like these may only be restricted in the form of valid and time, place, and manner regulations that serve a legitimate government purpose,<sup>6</sup> such as requiring that protests not occur during rush-hour traffic on a busy road<sup>7</sup> or requiring demonstrators to turn down their speakers if they are too loud.<sup>8</sup> Restrictions on protected First Amendment activity cannot be arbitrary or overly restrictive.<sup>9</sup>

Here, the demonstrators endeavored to follow any statutory restrictions on their activities that may have existed, but there were none. They went so far as to inform the NOPD of the planned events, which they were not required to do. The New Orleans Municipal Code specifically exempts picketing activities from its permit statutes.<sup>10</sup> Additionally, the Code provision cited by NOPD officers on October 29 explicitly exempts non-commercial leafleting from its permit requirement.<sup>11</sup>

For the foregoing reasons, NOPD officers were clearly breaking the law when they threatened to arrest people for engaging in a peaceful demonstration, a constitutionally protected activity. They were also breaking the law when they told the demonstrators to stop handing out leaflets, another constitutionally protected activity. This pattern of violating demonstrators' First Amendment rights is unacceptable, and needs to be stopped.

We are writing to put you personally on notice of these ongoing problems. We hope that you will begin mandatory First Amendment training for your officers, so that they avoid transgressing constitutionally protected rights in the future. Please do not hesitate to contact us should you have questions or concerns.

Sincerely,



Marjorie Esman  
Executive Director

cc: Penya Moses-Field, City Attorney, by fax and mail (504-658-9869)  
Major Robert Norton, Chief, 1<sup>st</sup> District by fax and mail (504-658-6342)  
Major Edwin Hosli, Chief, 8<sup>th</sup> District by fax and mail (504-658-6741)

<sup>3</sup> "Demonstration" is defined in the New Orleans Municipal Code at Sec. 54-342 (c)(1).

<sup>4</sup> Grayned v. City of Rockford, 408 U.S. 104, 116 (1972).

<sup>5</sup> Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 377 (1997). See also Pleasant Grove City, Utah v. Summum, 129 S.Ct. 1125, 1132 (2009).

<sup>6</sup> Pleasant Grove, 129 S.Ct. at 1132.

<sup>7</sup> Cox v. Louisiana, 397 U.S. 536, 554 (1965).

<sup>8</sup> Kovacs v. Cooper, 336 U.S. 77 (1949).

<sup>9</sup> Beckerman v. City of Tupelo, Miss., 664 F.2d 502, 512 (1981).

<sup>10</sup> New Orleans Municipal Code Sec. 154-1653 (b) ("No part of this article shall be construed to interfere with lawful picketing.").

<sup>11</sup> New Orleans Municipal Ordinance Sec. 110-222 (c).