



UNIVERSITY OF
GEORGIA



VIA EMAIL

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Chief of Police William E. Benny – dpd@dothan.org

March 28, 2022

RE: 2022 Permit for Tri-State Expo's Second Annual Juneteenth Celebration Parade

Dear City of Dothan Officials:

Tri-State Expo (“TSE”) and its Planning and Directing Chairperson, Mrs. Evangeline Reynolds-Gunn have retained the ACLU of Alabama and the University of Georgia’s First Amendment Clinic as counsel in anticipation of TSE’s second annual Juneteenth Celebration Parade scheduled for June 4, 2022. We write to address concerns regarding last year’s permit application process and to urge that TSE’s application for this year’s event be timely approved. We also write in response to Dothan City Manager Kevin Cowper’s request for input on the broader constitutional issues presented by the parade permit provisions in Dothan’s Municipal Ordinance (“Parade Permit Ordinance” or “Ordinance”).¹

Background

TSE is a community-centered 501(c)(3) organization established in 2017 with the goal of promoting small independent businesses in the tri-state area (Alabama, Georgia, and Florida) surrounding Dothan, Alabama. In early Spring 2021, TSE began planning Dothan’s first Juneteenth Celebration with the intent that it become an annual event. Mrs. Reynolds-Gunn, in her capacity as TSE’s Planning and Directing Chairperson, was the chief coordinator of

¹ See July 30, 2021 Email from Kevin Cowper to Evangeline Reynolds-Gunn, Exhibit A at TSE030. Attorney-client communications have been redacted from all documents contained in Exhibit A.

this event. 2021 was also the first year that Juneteenth was finally declared a state holiday by Governor Kay Ivey and a national holiday by President Biden.

TSE's Juneteenth Celebration showcases minority-owned businesses, artists, and entrepreneurs in Dothan and the greater tri-state area, uniting them through food, family attractions, and entertainment. In 2021, twenty-six (26) organizations participated in TSE's Juneteenth Celebration including several chapters of the Buffalo Soldiers, as well as community and business leaders from Alabama, Texas, Louisiana, Mississippi, and Georgia.

TSE's vision for the Juneteenth Celebration includes a parade that flows down Main Street -- Dothan's primary commercial thoroughfare -- and ends at the Dothan Civic Center, where entertainers and vendors will be waiting to continue the festivities. This vision is consistent with the City's other culturally significant parades that are authorized to proceed down Main Street, including the National Peanut Festival Parade, the Azalea-Dogwood Parade, the Christmas Parade, and the Veteran's Day Parade.

However, in 2021 there was a great deal of misdirection and confusion concerning the required procedure for TSE to secure a parade route down Main Street. Ultimately, the City denied TSE's lawful permit application to hold the Juneteenth Celebration parade on a portion of Main Street. In order for the 2021 parade to go forward at all, TSE coordinators were left no choice but to settle for a less visible and less desirable parade route.

Heartbroken by this setback, TSE persevered in still hosting a successful 2021 Juneteenth Celebration with more than 500 spectators along the parade route. This turn-out, despite hurricane warnings² and COVID-19 concerns, demonstrated Dothan's and the surrounding communities' irrepressible interest in celebrating Juneteenth. After the parade, United States Representative Barry Moore and Alabama Representative Dexter Grimsley voiced their support for the celebration by speaking at Poplar Head Park. Multiple news outlets including, for example, News4, the Dothan Eagle, WRBL.com, and WTVY.com published articles about the celebration.³

² See Jason Hanna, "Claudette weakens to a tropical depression but still drenches Gulf Coast and the Southeast," *CNN* (June 19, 2021), available at: <https://www.cnn.com/2021/06/19/weather/tropical-storm-claudette-gulf-coast-weather-saturday/index.html>

³ See, e.g., Justin Walker, "Inaugural Juneteenth Celebration kicks off in downtown Dothan," *WTVY News4* (June 19, 2021), available at: <https://www.wtv.com/2021/06/19/inaugural-juneteenth-celebration-kicks-off-downtown-dothan>; Jay Hare, "Dothan Holds Inaugural Juneteenth Parade," *Dothan Eagle* (June 19, 2021), available at: <https://dothaneagle.com/news/local/dothan-holds-inaugural-juneteenth->

However, TSE and parade participants were gravely disappointed in the City's decision to deny TSE access to Main Street, especially after Mrs. Reynolds-Gunn's exhaustive efforts to comply with the City's confusing and unconstitutional requirements for obtaining a permit. The City's denial prevented TSE from reaching its desired audience, consisting of the populous and diverse citizenry who frequent and traverse Main Street, the City's most prominent commercial thoroughfare.⁴ It is our goal to avoid a similar outcome this year and in years to come.

2021 Permit Application Process Gone Awry

On March 16, 2021, Mrs. Reynolds-Gunn on behalf of TSE first reached out to the Dothan City Police Department ("Dothan PD") about obtaining a parade permit.⁵ Based on a phone call with Dothan PD employee Loretta Long, Mrs. Reynolds-Gunn submitted a parade permit application, estimating 100 participants and requesting a route starting at North Powell Street with the procession traveling from the Historic Train Depot area, down North Saint Andrews Street, and then curving to the left into the entrance of the Dothan Civic Center (hereinafter "Initial Route").⁶ Ms. Long also informed Mrs. Reynolds-Gunn that TSE would have to obtain "written approval" from all businesses along the Initial Route even though Dothan's Parade Permit Ordinance mentions no such requirement. Mrs. Reynolds-Gunn requested an official Dothan PD form or letter that she could present to the affected businesses,⁷ but was told that no form existed. Not to be deterred, Mrs. Reynolds-Gunn created a form herself and emailed it to Sgt. William Phares, who was now her main point of contact at the Dothan PD,

[parade/article_9ea8efe0-d147-11eb-9d7d-eb624f8cc30c.html](https://www.wrbl.com/news/national/juneteenth-colors-and-its-meaning-behind-the-federal-holiday/); Sara Wilson, "Juneteenth Colors and its Meaning Behind the Federal Holiday," *WRBL.com* (June 17, 2021), available at: <https://www.wrbl.com/news/national/juneteenth-colors-and-its-meaning-behind-the-federal-holiday/>; Justin Walker, "Tri-State Expo Announces 2021 Juneteenth Queens," *WTVY News4* (June 7, 2021), available at: <https://www.wtv.com/2021/06/07/tri-state-expo-announces-2021-juneteenth-queens/>

⁴ *Saieg v. City of Dearborn*, 641 F.3d 727, 740 (6th Cir. 2011) (for purposes of the First Amendment, an alternative location for speech is constitutionally insufficient "if the speaker is not permitted to reach the intended audience"); *see, e.g., City of Ladue v. Gilleo*, 512 U.S. 43, 56–57 (1994) (posting signs on commercial property was not an adequate alternative to posting signs on residential property because residents may wish for their message to reach their residential neighbors); *Dr. Martin Luther King, Jr. Movement, Inc. v. City of Chicago*, 419 F.Supp. 667, 674 (N.D.Ill. 1976) (parade route through black neighborhood not a constitutional alternative to parade route through white neighborhood when the intended audience was white).

⁵ *See* March 16, 2021 Email from Evangeline Reynolds-Gunn to Loretta Long, Exhibit A at TSE002-003.

⁶ *See* Initial Route Parade Permit Request, Exhibit A at TSE004-005.

⁷ *See* Exhibit A at TSE003 (Mrs. Reynolds-Gunn asking Ms. Long if Dothan PD has a drafted letter for TSE to use when approaching businesses about a parade agreement).

for his approval. Sgt. Phares responded, “Looks good from what I can (sic). Let (sic) get all printed and I’ll call soon.”⁸

Meanwhile, due to the high level of interest the Juneteenth Celebration was generating across the Southeast, and particularly from chapters of the Buffalo Soldiers in Georgia, Florida, and northern Alabama, TSE amended its permit request to include a parade route traveling along one mile of Main Street (hereinafter “Preferred Route”), as befit an event of this significance and broad interest. This Preferred Route started in front of Porter Square Mall at South Edgewood Drive and continued on Main Street to South Saint Andrews Street.⁹ On March 24th, Mrs. Reynolds-Gunn emailed Sgt. Phares this Preferred Route.¹⁰ She also communicated a revised estimate of participants of between 500 to 1,500.

Dothan’s Parade Permit Ordinance provides that Main Street is an available parade route for any event or organization upon approval of the Dothan Board of Commissioners (“Commissioners”) and with a permit from the Dothan PD. Notably, however, the Ordinance “grandfathers” in the National Peanut Festival Parade, the Azalea-Dogwood Parade, the Christmas Parade, and the Veteran’s Day Parade as having permission to use Main Street without seeking approval from the Commissioners.¹¹

Upon receiving TSE’s Preferred Route permit request, Sgt. Phares did not inform Mrs. Reynolds-Gunn that TSE would have to first seek permission from the Commissioners to use Main Street. Instead, Mrs. Reynolds-Gunn was informed she would need to secure authorization from the Alabama Department of Transportation (ALDOT) to close the requested portions of Main Street because it is also designated as State Highway 84. However, the Dothan PD could not provide Mrs. Reynolds-Gunn with any name or contact information for ALDOT. Again, not one to be discouraged, Mrs. Reynolds-Gunn conducted her own research and eventually got in touch with an appropriate ALDOT official, only to learn that ALDOT does not grant authorizations or permits for closure of Main Street, it only requires *notification* of the closure

⁸ See March 19, 2021 Email from Sgt. William Phares to Evangeline Reynolds-Gunn, Exhibit A at TSE001-002.

⁹ See March 24, 2021 Email from Evangeline Reynolds-Gunn to Sgt. William Phares, Exhibit A at TSE006-009.

¹⁰ See *id.*, Exhibit A at TSE006.

¹¹ See Dothan, Ala., Code § 98-268(b)(1) (“The only parades authorized to utilize Main Street are the annual National Peanut Festival Parade, the Azalea-Dogwood Parade, the Christmas Parade and the Veteran's Day Parade. Others may utilize Main Street as a parade route only upon prior approval of the board of commissioners and upon acquiring a permit from the chief of police.”), Exhibit A at TSE026.

once a permit has been issued by the City of Dothan.¹² Thus, the Dothan PD had essentially sent Mrs. Reynolds-Gunn on a tail-chasing mission by directing her to obtain authorization from ALDOT.

Also, during this time period, Mrs. Reynolds-Gunn began the time-intensive process of seeking written approval from the sixteen businesses along TSE's Preferred Parade Route. She expended many hours and much energy visiting each business, often multiple times, to explain what she was requesting and to ask for their written approval.¹³ Many of the business owners expressed hesitancy and confusion, having never been asked to give their consent to previous Dothan parades.¹⁴ Exhausted and deeply frustrated, on April 15, 2021, Mrs. Reynolds-Gunn wrote to Dothan's Community Relations Officer Vincent P. Vincent explaining how difficult this process had been and stating candidly, "We are experiencing feelings of being marginalized."¹⁵ Mr. Vincent responded with sympathy. He informed Mrs. Reynolds-Gunn that contrary to what she had previously been told, the permit application process *did not* "require consensus among the affected business owners," but only required that she "notify the business owners of the intent to have the parade."¹⁶ He added that Sgt. Phares had told him she was "doing everything correctly, in terms of moving forward with the application."¹⁷ Thus, once again, Mrs. Reynolds-Gunn had been misdirected, at the cost of considerable time and resources, in trying to navigate the permit application process in good faith. Confoundingly, Mr. Vincent encouraged her to still comply with the Dothan PD's improper request for written agreements from business owners.¹⁸

On May 3, 2021, Mrs. Reynolds-Gunn delivered the dutifully collected business owner signatures to Chief of Police William Benny and Sgt. Phares. Because one business had refused to provide approval, TSE proactively revised its Preferred Route to avoid this business by traveling along Main Street from South Edgewood Drive to South Foster Street and then proceeding to the Dothan Civic Center from there (hereinafter "Revised Preferred Route"). During this May 3rd meeting, Mrs. Reynolds-Gunn was told for the first time that TSE would have to pay up to \$10,000 for blockades and police officers to ensure public safety during the

¹² See May 3, 2021 Email from Charles D. Bush to Evangeline Reynolds-Gunn, Exhibit A at TSE019.

¹³ See April 15, 2021 Email from Evangeline Reynolds-Gunn to Vincent P. Vincent, Exhibit A at TSE011.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See April 15, 2021 Email from Vincent P. Vincent to Evangeline Reynolds-Gunn, Exhibit A at TSE010.

¹⁷ *Id.*

¹⁸ See April 27, 2021 Email exchange between Vincent P. Vincent and Evangeline Reynolds-Gunn, Exhibit A at TSE013-TSE014.

event. Chief Benny instructed Mrs. Reynolds-Gunn that she would need to speak with Dothan's Traffic Engineering Services Division (TESD) to coordinate the necessary blockades.

Mrs. Reynolds-Gunn met with TSED that same day, May 3, 2021. She was directed to reach out to Dothan's Traffic Engineering Manager and also to Sgt. Phares regarding the necessary details for TSED to provide a price quote for the blockade materials and related labor.¹⁹ During that TSED meeting she learned that an internal meeting had already occurred with the Dothan PD on or about April 29, 2021 where reluctance to grant TSE's parade permit had been expressed.²⁰ Another internal meeting about TSE's application was apparently held on May 4, 2021.²¹

On or about May 11, 2021, Sgt. Phares reached out to Mrs. Reynolds-Gunn to advise her that, despite previous reassurances from the Dothan PD that TSE's parade permit request would be approved by the Police Chief, the City Manager, Kevin Cowper, was refusing to grant approval for the Revised Preferred Route. Dothan's Parade Permit Ordinance affords no authority to the City Manager to make decisions on parade permit applications.

After making several telephone calls for clarification, Mr. Hugh Gunn, TSE's Treasurer, finally reached the Assistant City Manager, who expressed there was insufficient interest in the Juneteenth Celebration in terms of the number of attendees it would attract to justify closing off a portion of downtown Main Street for the Revised Preferred Route. To date, and despite requests from TSE's 2021 legal counsel, the City of Dothan has never explained how the City Manager had the authority to dictate whether a parade permit would be issued or denied.

On May 26, 2021, Dothan Chief of Police William Benny finally issued a letter formally denying TSE's use of Main Street for the Juneteenth Celebration Parade.²² The letter was untimely under the Parade Permit Ordinance which requires a denial be issued within five working days after the permit application is filed.²³ The letter cited as the reasons for the denial traffic and safety concerns as per Ordinance Section 98-268(a)1-3 and the need to seek the Commissioners' approval under Ordinance Section 98-268(b).²⁴ At no point prior had Mrs. Reynolds-Gunn been told that she needed the Commissioners' approval. Nor had the traffic and safety concerns ever been previously raised with Mrs. Reynolds-Gunn as potential obstacles

¹⁹ See May 3, 2021 email from Mrs. Reynolds-Gunn to Traffic Committee, Exhibit A at TSE017.

²⁰ *Id.*

²¹ See May 11, 2021 email from Mrs. Reynolds-Gunn to Sgt. Phares, Exhibit A at TSE021.

²² See May 26, 2021 Letter from Police Chief Benny to Mrs. Reynolds-Gunn, Exhibit A at TSE022-27.

²³ See Ordinance, Section 98-270 (Notice of rejection), Exhibit A at TSE026. As Mrs. Reynolds-Gunn submitted her Revised Preferred Parade Route to Police Chief Benny on May 3, 2021, his May 26th denial letter far exceeded the five-day time period.

²⁴ See May 26, 2021 Letter from Police Chief Benny to Mrs. Reynolds-Gunn, at TSE022-27.

during the many preceding weeks she had spent in communication with the Dothan PD, making every conceivable effort to comply in good faith with the permitting process. Chief Benny's letter stated that a permit would only be approved for the Initial Route sought by TSE, thus depriving the Juneteenth parade participants of access to the City's main commercial thoroughfare, notwithstanding that such access is granted in perpetuity to other culturally significant parades in Dothan. Chief Benny's delay in sending the letter also gave Mrs. Reynolds-Gunn and TSE little time to appeal and regroup before the June 19, 2021 Juneteenth Celebration and parade.

With only a few weeks remaining until the scheduled Juneteenth parade, TSE filed an appeal to the City Commissioners to overturn the denial of TSE's use of Main Street. TSE was forced to wait until the Commissioners met for their next regularly scheduled commission meeting on June 1, 2021, to seek a resolution, just 19 days before the parade was scheduled to occur.²⁵ At this hearing, TSE was represented by the ACLU of Alabama ("ACLU"). Police Chief Benny again raised concerns about safety and also about the cost of the use of Main Street. The ACLU noted that the annual Peanut Festival Parade presented the same safety and cost concerns and was still allowed to parade on Main Street. However, none of the Dothan officials present at the hearing responded to this fact. Ultimately, the Board of Commissioners voted against TSE's appeal: two Commissioners voted in favor, three against, and one Commissioner was absent.

Desperate to ensure the Juneteenth Parade would go forward given how many people were making plans to travel to Dothan to participate, TSE submitted yet another permit application for a parade route that ran parallel to Main Street, beginning at Porter Square Mall, continuing down E. Adams Street, and concluding at the Dothan Civic Center.²⁶ This permit was approved. However, it again deprived TSE and the Juneteenth parade participants of access to the City's main commercial thoroughfare, notwithstanding that such access has been granted on a standing basis to other culturally significant parades in Dothan. *Saieg*, 641 F.3d at 740 (for purposes of the First Amendment, an alternative location for speech is constitutionally insufficient "if the speaker is not permitted to reach the intended audience").

²⁵ Ordinance Section 98-271 (Appeal procedure), Exhibit A at TSE027, provides that "[a]ny person aggrieved shall have the right to appeal the denial of a parade or public assembly permit to the board of commissioners. The appeal shall be taken within five working days after denial. The board of commissioners shall act upon the appeal at the next regularly scheduled commission meeting."

²⁶ See Approved Parade Permit Request, Exhibit A at TSE028.

Constitutional Concerns re: Parade Permit Ordinance and its Application to TSE

We outline the following concerns both with the facial validity of Dothan’s Parade Permit Ordinance and the manner in which it was applied to the 2021 Juneteenth Celebration parade.

A. Ordinance Section 98-268(b)(1) invites unbridled discretion in violation of the First Amendment

Located in the heart of Dothan, Main Street is the City’s most prominent public thoroughfare and a quintessential public forum for free expression. *See Bloedorn v. Grube*, 631 F.3d 1218, 1231 (11th Cir. 2011) (traditional public forums include public parks and streets, which have long been used “for purposes of assembly, communicating thoughts between citizens, and discussing public questions”) (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n* 460 U.S. 37, 45 (1983)). However, Dothan’s Parade Permit Ordinance vests the Commissioners with wide-ranging discretion to select who may express themselves on this main thoroughfare of town. Specifically, Section 98-268(b)(1) (hereafter “(b)(1)”) states:

The only parades authorized to utilize Main Street are the annual National Peanut Festival Parade, the Azalea-Dogwood Parade, the Christmas Parade and the Veteran’s Day Parade. Others may utilize Main Street as a parade route only upon prior approval of the board of commissioners and upon acquiring a permit from the chief of police.

Absent any objective criteria to guide the Commissioners in deciding whether to grant or deny Main Street permit requests, (b)(1) invites decision-making based on whether the Commissioners favor or disfavor the permit seeker’s message. *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 763-64 (1988). (“[W]ithout standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.”); *see also Bloedorn*, 631 F.3d at 1236 (“To avoid unbridled discretion, the permit requirements should contain narrowly drawn, reasonable, and definite standards to guide the official’s decision.”); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1361 (11th Cir. 1999) (to avoid unbridled discretion, “[a]n ordinance that gives public officials the power to decide whether to permit expressive activity must contain precise and objective criteria on which they must make their decisions”).

The unbridled discretion created by (b)(1) renders the provision unconstitutional on its face, regardless of whether a particular applicant such as TSE is able to demonstrate that it has been denied the use of Main Street due to actual viewpoint-based bias on the part of the Commissioners. *See Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992)

("[T]he success of a facial challenge on the grounds that an ordinance delegates overly broad discretion to the decisionmaker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so."); *Students for Life USA v. Waldrop*, 162 F. Supp. 3d 1216, 1242 (S.D. Ala. 2016) ("The thrust of the unbridled discretion doctrine, moreover, is that such discretion of itself raises an unacceptable risk of viewpoint discrimination; there is no burden on the plaintiff to prove that the government has exercised, or will exercise, its unbridled discretion in a viewpoint-biased manner."). Section (b)(1) is therefore unconstitutional on its face and may not be used to deny TSE a permit for Main Street in 2022.

B. Ordinance Section 98-268(b)(1) is a content-based regulation that cannot withstand strict scrutiny.

Section (b)(1) is additionally unconstitutional when analyzed as a time, place, and manner restriction on expressive activity on Main Street because it is not content neutral and cannot withstand strict scrutiny.

"[A] time, place, and manner restriction can be placed on a traditional public forum [such as Main Street] *only* if it is content neutral, narrowly tailored to achieve a significant government interest, and leave[s] open ample alternative channels of communication." *Bloedorn*, 631 F.3d at 1231 (cleaned up and emphasis in the original).

Here, (b)(1) is not content neutral because it does not apply equally to all parade organizers seeking to hold their events on Main Street; it only applies to parade organizers who are not the National Peanut Festival Parade, the Azalea-Dogwood Parade, the Christmas Parade, or the Veteran's Day Parade. *See Burk v. Augusta-Richmond Cnty.*, 365 F.3d 1247, 1254 (11th Cir. 2004) (stating that a regulation on speech is content neutral when it "applies equally to all, and not just to those with a particular message or subject matter in mind"). Because the content of the parade determines whether the organizer has to seek permission from the Commissioners to use Main Street, (b)(1) is a content-based regulation of speech. This triggers constitutional strict scrutiny. *See One World One Family Now v. City of Miami Beach*, 175 F.3d 1282, 1286 (11th Cir. 1999) (explaining that government regulations that discriminate against protected speech based on content are subject to strict scrutiny). Strict scrutiny means that the regulation "must be the least restrictive means of achieving a compelling state interest." *McCullen v. Coakley*, 573 U.S. 464, 478 (2014).

Here, it is unclear what governmental interest is being served by (b)(1)'s requirement that some permit applicants first have to get permission from the Commissioners to use Main Street before seeking a permit from the Dothan PD. Traffic flow and public safety are not the interests

being served by (b)(1) because those interests are already accounted for in Section 98-268(a)(1)-(3) (“Standards for issuance”), which the Dothan PD takes into account when deciding whether to issue a permit.²⁷ Thus, it is a mystery what interest (b)(1) serves other than to allow the Commissioners to act as gatekeepers for which messages may be communicated by a parade on Main Street. This is not even a permissible interest, let alone a compelling one. *See R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992) (“The First Amendment generally prevents government from proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed. Content-based regulations are presumptively invalid.”) (Internal citations omitted).

Moreover, even if the City could articulate a compelling reason for (b)(1), the provision is not narrowly tailored because (b)(1) contains no “narrowly drawn, reasonable, and definite standards to guide the [Commissioners’] decision” about whether to grant or deny a permit seekers’ request to use Main Street. *Bloedorn*, 631 F.3d at 1236. *See, e.g., Burk*, 365 F.3d at 1255 (striking down content-based permit ordinance as not being the “least restrictive means” because other, more narrowly-tailored measures existed to address traffic flow and peace-keeping concerns). Thus, again, (b)(1) is a facially invalid provision when analyzed as a time, place, and manner regulation and cannot be used to deny TSE a permit for Main Street in 2022.

C. The permit application procedures, as applied to TSE in 2021, were unconstitutional

During the 2021 application process, Mrs. Reynolds-Gunn was informed by the Dothan PD that, in order to receive a parade permit on behalf of TSE -- whether on Main Street or elsewhere -- she would need to obtain permission from all businesses situated along her proposed route (hereafter “business approval requirement”). This requirement raises serious constitutional issues as it essentially provided veto power to private, unelected persons over an otherwise lawful exercise of First Amendment protected speech. Just as government officials may not exercise unbridled discretion in granting or denying a request to hold a parade on a public street, they may not delegate such unbridled discretion to private actors. *See Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928) (finding that an ordinance requiring consent from neighboring

²⁷ Section 98-268(a), Exhibit A at TSE025, reads: “Standards for issuance: 1. The conduct of the parade or public assembly will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route or locations. 2. The conduct of the parade or public assembly will not require the diversion of so great a number of police officers of the city to properly police the line of movement and areas contiguous thereto as to prevent normal police protection to the city. 3. The conduct of such parade or public assembly will not require the diversion of s great a number of ambulances as to prevent normal ambulance service to portions of the city other than that to be occupied by the proposed line of march and areas contiguous thereto.”

landowners in order to obtain a permit violated the Due Process Clause); *Eubank v. Richmond*, 226 U.S. 137 (1912) (holding that city ordinance requiring two-thirds resident approval to approve changes to a street was unconstitutional).

Any suggestion that a permit applicant must obtain approval from all effected business owners in order to be granted a permit should be removed from the Dothan PD's permit application form. Additionally, Dothan PD employees should be trained not to instruct or require permit applicants to seek business owners' approval.

D. The reasons given by Chief of Police Benny for denying TSE use of Main Street reflect content-based discrimination in violation of the First Amendment

Chief of Police William Benny defended his denial of TSE's Revised Preferred Parade Route on Main Street, citing traffic and safety concerns articulated in Ordinance Sections 98-268(a)(1)-(3).²⁸ However, the "most favored" parades listed in Section (b)(1), such as the National Peanut Festival Parade, which have standing permission to use Main Street also raise the same, if not greater, traffic and safety concerns. Yet the four "most favored" parade organizers are allowed to use Dothan's main thoroughfare and traditional public forum to express their messages. The First Amendment does not permit this kind of preferential treatment based on a speaker's identity or content. *See Los Angeles Police Dep't v. United Reporting Pub. Corp.*, 528 U.S. 32, 47 (1999) ("Our cases have repeatedly frowned on regulations that discriminate based on the content of the speech or the identity of the speaker."); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) ("[W]e have frequently condemned ... discrimination among different users of the same medium for expression").

E. The City failed to demonstrate good faith in its dealings with TSE and Mrs. Reynolds-Gunn

The City's treatment of TSE and Mrs. Reynold-Gunn throughout the 2021 permit application process failed to demonstrate objective good faith. Examples of this include:

- Mrs. Reynolds-Gunn was directed by two Dothan PD employees (Loretta Long and Sgt. William Phares) to collect business approval signatures in order to obtain a permit, on Main Street or otherwise. Sgt. Phares repeatedly represented to Mrs. Reynolds-Gunn through his words and actions that these approvals were a requirement to obtain a permit and Community Relations Officer Vincent P. Vincent encouraged Mrs. Reynolds-Gunn to comply with getting these approvals

²⁸ The Chief also cited the need for TSE to seek the Commissioner's approval per Ordinance Section 98-268(b)(1). The facial invalidity of (b)(1) is addressed in Sections A. & B. above. In sum, it cannot be used to deny TSE a Main Street permit.

even while recognizing that it was problematic to ask her to do so. Imposing this business approvals requirement on Mrs. Reynolds-Gunn and TSE was blatantly unconstitutional, as explained in Section C above.

- The Dothan PD never informed Mrs. Reynolds-Gunn that the Parade Permit Ordinance (unconstitutionally) required her to seek the Commissioners' approval to use Main Street before a permit could be issued. The Dothan PD instead indicated that if she complied with everything they asked her to do, which she did, TSE would receive its requested permit. Yet Police Chief Benny cited the failure to obtain the Commissioners' approval as a reason for his denying TSE the use of Main Street.
- Mrs. Reynolds-Gunn was incorrectly directed by the Dothan PD to obtain ALDOT's authorization for use of Main Street when, in fact, all that ALDOT required was notification of closure once the Dothan PD issued a permit for Main Street.
- After weeks of communicating with the Dothan PD and collecting business approval signatures, Mrs. Reynolds-Gunn was for the first time informed on May 3, 2021 that TSE may have to pay as much as \$10,000 for the placement of police barricades along the parade route (which TSE was nonetheless willing to do).
- When Mrs. Reynolds-Gunn spoke to Dothan's Traffic Engineering Services Division (TESD) on May 3, 2021 about arranging for the barricades, she learned there had already been an internal meeting where the Dothan PD was, at the very least, leaning towards denying her permit application. Yet earlier on May 3rd, Chief Benny and Sgt. Phares had continued to lead her to believe that if she complied with all of their requests and requirements, including arranging and paying for the police blockades, her permit would be granted.
- A week later, on or about May 11, 2021, Mrs. Reynolds-Gunn was verbally informed that after all of her diligent efforts to comply with everything the PD had asked of her, TSE's permit was being denied at the decision of the City Manager, who has no authority under the Parade Permit Ordinance to grant or deny permits. The conclusory rationale given for this *ultra vires* decision was insufficient community interest in the Juneteenth Celebration. Yet the City provided no supporting evidence for this rationale and Mrs. Reynolds-Gunn, as the primary organizer of the event, knew otherwise.
- Mrs. Reynolds-Gunn did not receive a formal denial of her permit request from Police Chief Benny until two weeks later on May 26, 2021. This was an untimely denial under the Parade Permit Ordinance and gave her little time to appeal and regroup before the June 19, 2021 Celebration parade. Chief Benny's denial for the first time raised safety and traffic concerns that had not been mentioned to Mrs.

Reynolds during her weeks of prior communications with the Dothan PD as obstacles to her obtaining the requested permit.

- At the June 1, 2021 appeal hearing, no justification was given for why TSE's Juneteenth Celebration Parade was being treated differently than other culturally significant parades in Dothan that use Main Street.

The result of the foregoing process is that Mrs. Reynolds-Gunn experienced deep frustration, disrespect, and marginalization as well as multiple violations of her and her organizations' First Amendment rights.

Conclusion

Given last year's tangled and constitutionally infirm decision-making by the City of Dothan about TSE's permit application, given TSE's intent to host an annual Juneteenth Celebration and parade in Dothan for many years to come, and reserving all rights, we propose that it is in all parties' interests to negotiate a mutually acceptable 2022 parade route that both allows TSE to use a portion of Main Street and accommodates safety and traffic concerns on the part of the City. Such a solution for this year would hopefully lay the foundation for future years such that, ideally, the parade route would not need to be renegotiated for every Juneteenth Celebration.

We ask that you let us know by April 11, 2022, whether the City is willing to enter into discussions with the goal of determining no later than May 6, 2022 if a permitted parade route can be agreed upon so that TSE may finalize their plans for the second annual Juneteenth parade, scheduled to take place on June 4, 2022.

We appreciate your serious consideration of this offer to come to the table and are available to speak sooner than in two weeks if desired.

Sincerely,

Clare Norins

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