

May 30, 2025

Jim Holmes, Mayor
City of Waco, Texas
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300 Austin Avenue
Waco, Texas 76702
Via US Mail &
Email: [REDACTED]

Ryan Holt, Assistant City Manager
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Kristen Hamilton-Karam, City Attorney
City of Waco, Texas
PO Box 2570
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Re: Unconstitutional Speech Zone at Out on the Brazos Festival in Waco, Texas

Dear Mayor Holmes, Ms. Hamilton-Karam, and Mr. Holt:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. Ronnie Holmes, pastor of the Church of the Open Door in Waco, Texas, contacted us about Waco's infringement on his religious expression and exercise at the annual Out on the Brazos festival.

On October 19, 2024, Pastor Holmes was compelled by his Christian beliefs to visit Brazos Park East, a public park owned and maintained by the City of Waco ("City"), during the annual Out on the Brazos festival hosted by the Waco Pride Network ("WPN") to share his faith with attendees. He was joined by four other members of Open Door church. They did not come to protest or create any kind of disturbance at the festival. Nor did they wish to shout, use amplification, or hold signs. As they did the year prior at this same event, Pastor Holmes and his companions simply sought to hand out small, glossy cards or engage in one-on-one or small group, consensual dialogue with others about the merits of Christianity.

During the event, the entire park remained free and open to the public. Neither payment nor ticket were required for entry into the event. Everyone was free to walk in and enjoy the park just as they could at any other time of the year.

After entering the park, Pastor Holmes and his group gravitated to an open grassy area out of the way of pedestrian traffic and spoke with several attendees about their faith. But approximately one hour later, at least three police officers from the Waco Police Department, one of which was Officer Chris Sharpless, approached and halted their speech. Officer Sharpless informed Pastor Holmes that WPN's permit required "protestors" to move

to a restricted zone in the park, and the officers proceeded to move them, escorting the Open Door group to a 10-foot x 20-foot zone marked off by cones, sitting approximately fifty yards away from the outskirts of the core event area. Pastor Holmes and his companions found the new spot lacking, separating them from and depriving them of their intended audience.

Seeing no basis for the forced displacement, Pastor Holmes approached the Waco police officers to inquire about their removal. After speaking with an unknown source, one of the police officers informed Pastor Holmes that WPN had a permit and could therefore dictate what kind of activities were allowed there. Elaborating further, the officer said it was “kind of like a business prohibiting unwanted activity.” But due to the lack of clarity on the conditions of the permit, the police officers decided to let the group walk around in the park until someone complained. The group stayed around for another hour or so before leaving but were constantly concerned about subjective complaints.

Troubled by this incident and wanting to evangelize at future events in public spaces, Pastor Holmes reached out to the City Manager’s Office several days later, on October 25, 2024, to schedule a meeting to obtain clarity and hopefully resolve the issue.

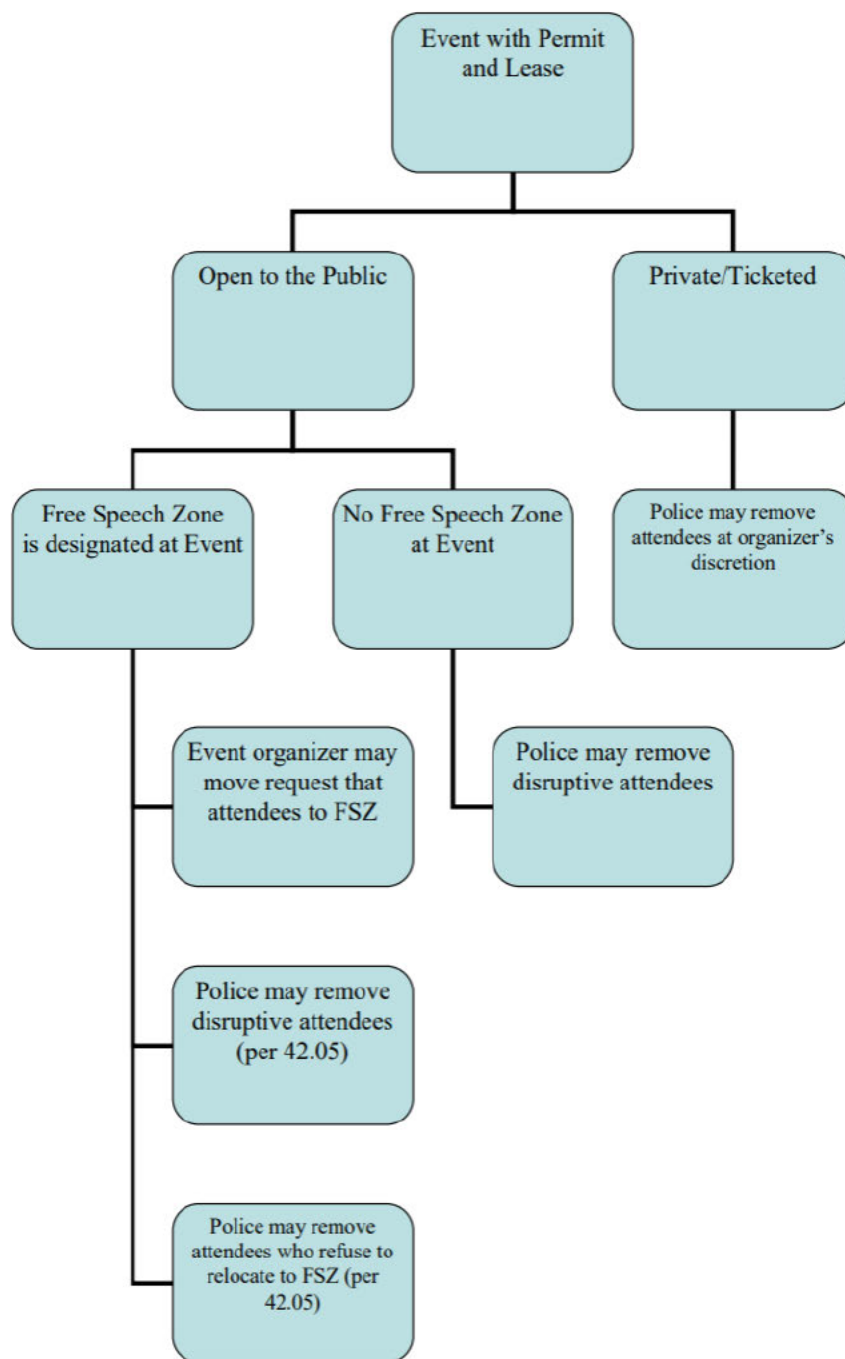
Subsequently, on November 12, 2024, Pastor Holmes along with two other concerned local pastors met with five city officials—Assistant City Manager Ryan Holt, Waco Police Chief Sheryl Victorian, Waco Park Director Jonathan Cook, and two city attorneys about the incident at the Out on the Brazos festival. To Pastor Holmes’ disappointment, city officials stood behind the speech zone and informed the pastors of a new policy that would ensure similar displacement of them in the future. The city representatives alluded to considerations of fairness for all in attendance and the belief that speech zones were necessary to ensure everyone could express their opinions in peace. The city attorneys further contended that speech zones are justified as a reasonable time, place, and manner restriction, because WPN had secured a permit for use of the park, giving them the right to exclude unfavorable expression. According to the city attorney’s office, WPN has the prerogative to relocate attendees to a speech zone anytime they believe it would be best, telling Pastor Holmes: “You have the right to come because it’s open, but they have a right to ask you to go to the free speech zone if they choose to.”

Pastor Holmes received a written copy of this policy from the City on March 11, 2025. It is entitled Free Speech and Protest Guidelines for Permitted Events. The policy states that a “designated free speech zone will be set up by event organizers within the Permitted Area, ensuring a space where public speakers can peacefully express their views without disrupting the event.” Furthermore, “[i]f a Public Speaker disrupts the Event *within the Permitted Area*, event organizers or event security will request said Public Speaker to move to a designated free speech zone.” To illustrate, the City provided a flow chart.



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The policy confirms that WPN can create a “free speech zone” and relegate Pastor Holmes and his small group of Christian friends to it. Troubled by this prospect at the 2025 Out on the Brazos festival, Pastor Holmes sends this letter, through counsel, in hopes of securing needed relief without resorting to litigation.

LEGAL ANALYSIS

The First Amendment to the U.S. Constitution provides, “Congress shall make no law respecting an establishing of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.” These clauses “work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022). The double protection afforded religious speech is by design—“a natural outgrowth of the framers’ distrust of government attempts to regulate religion and suppress dissent.” *Id.* at 524 (citing A Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison 12, 25 (R. Ketchum ed. 2006)). Pastor Holmes’ ministry of conversing with individual participants about his Christian faith at the Out of the Brazos festival falls squarely under the protection of both clauses. Thus, the City’s sequestration of Pastor Holmes’ religious speech to a remote location within Brazos Park East abridges both his (I) freedom of speech and (II) the free exercise of his religion.

I. The City’s Actions Violate the Free Speech Rights of Pastor Holmes

Forum analysis governs the validity of restrictions on speech considering: A) the degree of protection to which the speech is due, B) the status of the forum where the speaker wants to speak, and C) applying the corresponding level of scrutiny to a given forum. *Cornelius v. NAACP Legal Def. and Educ. Fund*, 473 U.S. 788, 797-800 (1995). This analysis reveals that the City’s relocation of Pastor Holmes’ religious speech to an unworkable speech zone within a public park is unconstitutional.

A. The Free Speech Clause Protects Pastor Holmes’ Religious Expression

Speech on religious topics receives full constitutional shielding. *Capital Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995). Both oral and written methods of communicating religious viewpoints are protected. *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981); *Edwards v. South Carolina*, 372 U.S. 229, 236 (1963) (“religious harangue” protected). And, importantly, this protection “includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker’s message may be offensive to his audience.” *Hill v. Colorado*, 530 U.S. 703, 716 (2000); *Cox v. Louisiana*, 379 U.S. 536, 551 (1965).

B. A Public Park that Remains Open to the Public is a Traditional Public Forum

The degree to which speech can be restricted depends on the nature of the property where the speaker wishes to speak. *Frisby v. Schultz*, 487 U.S. 474, 479 (1988) (citation omitted). Pastor Holmes wants to convey his beliefs at Brazos Park East, a public park operated and maintained by the City. Public parks are “quintessential” public fora for speech. *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983); *see also Hague v. CIO*, 307 U.S. 496, 515 (1939) (stating that parks “have immemorially been held in

trust for the use of the public and, time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions.”); *Serv. Emps. Int’l Union, Loc. 5 v. City of Houston*, 595 F.3d 588, 595 (5th Cir. 2010) (identifying streets and parks as “places which by long tradition or government fiat have been devoted to assembly and debate”).

The presence of the Out on the Brazos festival does not alter the park’s entrenched status as a traditional public forum. It matters not how the City characterizes the arrangement. The government “may not by its own *ipse dixit* destroy the ‘public forum’ status of streets and parks which have historically been public forums...” *United States v. Grace*, 461 U.S. 171, 180 (1983). Public fora retain their traditional public forum status during events and festivals that are free and open to the public—regardless of the issuance of a permit. See, e.g., *Startzell v. City of Philadelphia*, 533 F.3d 183, 196 (3d Cir. 2008) (city streets and sidewalks during public festival); *Johnson v. Minneapolis Park & Recreation Bd.*, 729 F.3d 1094, 1098 (8th Cir. 2013) (public park during pride festival); *Gathright v. City of Portland*, 439 F.3d 573, 579 (9th Cir. 2006) (various public streets during art festival); *Parks v. City of Columbus*, 395 F.3d 643, 652 (6th Cir. 2005) (streets during arts festival); see also *Teesdale v. City of Chicago*, 690 F.3d 829, 834 (7th Cir. 2012) (“city streets are traditional public forum, and their character as a public forum is retained even though they are used for a public festival sponsored by a private entity.”). “The City cannot simply write off the nature of a forum by slapping magic words like ‘exclusive’ into a permit agreement.” *McMahon v. City of Panama City Beach*, 180 F.Supp.3d 1076, 1098 (N.D. Fla. 2016) (public park retains its status as traditional public fora during motorcycle festival). In reality, the Out of the Brazos event is unticketed and non-exclusive. There are no barriers to entry and the event welcomes all members of the public to partake in the festivities. Brazos Park East retains its traditional status.

This traditional status is significant. Restrictions on speech in such fora are subject to exacting scrutiny, rendering the government’s power to limit speech there “very limited.” *McCullen v. Coakley*, 573 U.S. 464, 477 (2014); *Int’l Soc. For Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge*, 876 F.2d 494, 497 (5th Cir. 1989).

C. Forced Removal from Public Forum is an Unconstitutional Restraint on Speech

Speech restrictions in traditional public fora cannot be tolerated unless they are 1) be content-neutral, 2) narrowly tailored to serve a significant government interest, and 3) leave open ample alternative channels of communication. *Perry Educ. Ass’n.*, 460 U.S. at 45. The City’s policy of relocating unfavorable speakers to a remote speech zone falls short of these requirements.

First, the removal of Pastor Holmes’ speech from the populated core of the festival to a remote and ineffective speech zone is a content-based measure, premised on the WPN’s disapproval—in other words, Pastor Holmes’ speech was targeted precisely *because* of the content. “Listener’s reaction to speech is not a content-neutral basis for regulation.” *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992). Rather, excluding speech because others dislike it constitutes an unconstitutional heckler’s veto. *Beckerman v. City of Tupelo, Miss.*, 664 F.2d 502, 509 (5th Cir. 1981). “In almost every instance it is not acceptable for the state to prevent a speaker from exercising his constitutional rights because of the reaction to him by others.” *Id.*

Second, the exclusion to the designated speech zone is plainly not narrowly tailored to meet any legitimate interest. Only restrictions that refrain from “burden[ing] substantially more speech than is necessary to further the government’s legitimate interests” are narrowly tailored. *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989); see *Doe I v. Landry*, 909 F.3d 99, 112–113 (5th Cir. 2018) (noting that it is the government’s burden to justify its restriction of speech). To be sure, the City has no legitimate interest in suppressing speech based on a permit-holder’s displeasure. See *McMahon*, 180 F.Supp.3d at 1106 (“The City has no interest – legitimate, significant, compelling, or otherwise – that is served by...[its] policy of unquestioningly arresting anyone that the permit holder claims is trespassing”). Excommunicating speakers from certain portions of traditional public fora based on a permit-holder’s opposition “is far too deferential to the caprice and fancy of the permit holder to be narrowly tailored to anything.” *Id.*; see also *Gathright*, 439 F.3d at 577 (City’s “policy of allowing permittees unfettered discretion to exclude private citizens on any (or no) basis is not narrowly tailored”). The City’s deferential policy and enforcement thereof leads to overly broad enforcement. Indeed, as exhibited here, at the discretion of WPN, the Waco Police Department may target a group of five people or less engaging in nondisruptive, intimate conversations to an equal extent as a crowd of fifty people holding signs and shouting their disapproval over megaphones and speakers.

Moreover, by disallowing Pastor Holmes’ methods of personal conversation, the policy effectively bans an entire medium of communication from all but a 10-foot by 20-foot area. Such bans are invariably overly broad. See, e.g., *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994) (invalidating a city ordinance banning the posting of signs even though it was content neutral); *Martin v. City of Struthers*, 319 U.S. 141, 151-52 (1943) (invalidating an ordinance banning the door-to-door distribution of handbills); *Schneider v. Town of Irvington*, 308 U.S. 147, 164-65 (1939) (invalidating the ordinances of several communities forbidding leafleting). “First Amendment jurisprudence is clear that the way to oppose offensive speech is by more speech, not censorship, enforced silence or eviction from legitimately occupied public space.” *Gathright*, 439 F.3d at 578. The City’s removal of Pastor Holmes from the desired public forum where he can reach an audience to a space where he is unable to do so is not a narrowly tailored measure.

The sequestration of Pastor Holmes is further unconstitutional because it fails to leave open ample alternatives for his speech. “[A]n alternative is not ample if the speaker is not permitted to reach the ‘intended audience.’” *Startzell*, 533 F.3d at 202 (3d Cir. 2008); see *Edwards v. City of Coeur d’Alene*, 262 F.3d 856, 866 (9th Cir. 2001) (“If an ordinance effectively prevents a speaker from reaching his intended audience, it fails to leave open ample alternative means of communication.” (citing *Heffron*, 452 U.S. at 654)). Pastor Holmes wants to communicate his religious beliefs with people attending Out of the Brazos through one-on-one and small group discussions, but he cannot do so from the designated speech zone that is purposely set away from the populated area of the festival. And in any event, “one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.” *Schneider*, 308 U.S. at 163. Further, once herded into the designated speech zone, Pastor Holmes and his companions are suddenly grouped and associated with all other speakers that now occupy that zone—whatever their message and whatever their methods. This renders Pastor Holmes’ chosen speech and mission futile, foreclosing any sufficient means of communication.

II. The City's Actions Violate the Free Exercise Rights of Pastor Holmes

“[T]he government, if it is to respect the Constitution’s guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens. . . . The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Masterpiece Cakeshop v. Colorado C.R. Comm’n*, 584 U.S. 617, 638 (2018) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534 (1993)). When state actors apply an otherwise-neutral law with religious hostility, “they violate the Free Exercise Clause.” *Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021); see e.g., *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 686 (9th Cir. 2023) (violation of students’ free exercise rights where school district officials exhibited hostility toward Christian group’s view on same-sex attraction); *Spivack v. City of Philadelphia*, 109 F.4th 158, 169–170 (3d Cir. 2024) (reversing lower court’s grant of defendant city’s motion for summary judgment where Third Circuit found that a reasonable jury could view city official’s comments as hostile toward plaintiff’s religious viewpoint regarding vaccines, and therefore, a violation of plaintiff’s free exercise rights).

Here, the City of Waco targeted Pastor Holmes’ activities precisely because of their religious nature. Pastor Holmes’ Christian faith entails teachings on same-sex attraction that are anathemas to WPN. Enabled by the express language of the City’s policy, WPN compelled the City to impart a message of its own: “Your faith does not belong here.” And the City obliged. This animus was not merely covert, but openly revealed by the communications with the officer at the event, and later by the city attorney at the November 12th meeting. The City enforces open hostility towards religion. Government action motivated by religious animus cannot be narrowly tailored to advance a compelling governmental interest. See *Lukumi*, 508 U.S. at 531. Therefore, “[i]f a government policy is motivated by religious animus, the policy is categorically unconstitutional under the Free Exercise Clause.” *Does 1-11 v. Bd. of Regents of Univ. of Colorado*, 100 F.4th 1251, 1268 (10th Cir. 2024). Waco’s policy is thus unconstitutional for this separate reason.

In addition to Pastor Holmes’ constitutional right to freely exercise his faith under the United States Constitution, his treatment by the City is also a blatant violation of his rights under the Texas Religious Freedom Restoration Act (TRFRA). TRFRA prohibits any government agency, including a municipality, from “substantially burden[ing] a person’s free exercise of religion,” except where the government agency demonstrates that the burden (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that interest. Tex. Civ. Prac. & Rem. Code Ann. § 110.003. The City has no legitimate, much less compelling, interest to justify banishing inconspicuous, one-on-one and small group conversations to a secluded zone simply because the presence of those conversations might make some guests “uncomfortable.” Nor can the forced removal qualify as the least restrictive means for addressing appropriate concerns.

DEMAND

As shown herein, the City's exile of Pastor Holmes' speech from a traditional public forum to a designated speech zone violated his First Amendment speech and free exercise rights. And the ongoing policy persists in doing so. To resolve this concern, Pastor Holmes requires written assurance that the City will no longer enforce its policy to banish religious speech to a speech zone within Brazos East Park. Because Pastor Holmes wants to share his faith at the park during this year's Out of the Brazos festival and similar events, we respectfully request that you respond to this letter in writing no later than two weeks of the date of this letter. If we do not hear from you by this date, we will assume the City intends to continue with unconstitutional banishment of Pastor Holmes' speech, leaving legal action his sole recourse.

Sincerely yours,



Nathan W. Kellum, Senior Counsel
Garrett Bell, Associate Counsel
First Liberty Institute

[REDACTED]
[REDACTED]

cc: Ronald Holmes, Pastor
Church of the Open Door

[REDACTED]