

December 16, 2025

Regina Romero, Mayor
255 W. Alameda St.,
Tucson, Arizona 85701
Via US Mail &
Email: [REDACTED]

Tim Thomure, City Manager
255 W. Alameda St., Fl. 10
Tucson, AZ 85701
Via US Mail &
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Roi Lusk, City Attorney
255 W. Alameda St., Fl. 7
Tucson, AZ 85701
Via US Mail &
Email: [REDACTED]

Re: Unconstitutional Speech Zone at Winterhaven Festival of Lights

Dear Mayor Romero, Mr. Lusk, and Mr. Thomure:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. David Hoffman contacted us about Tucson's infringement on his religious expression and exercise at the Winterhaven Festival of Lights event.

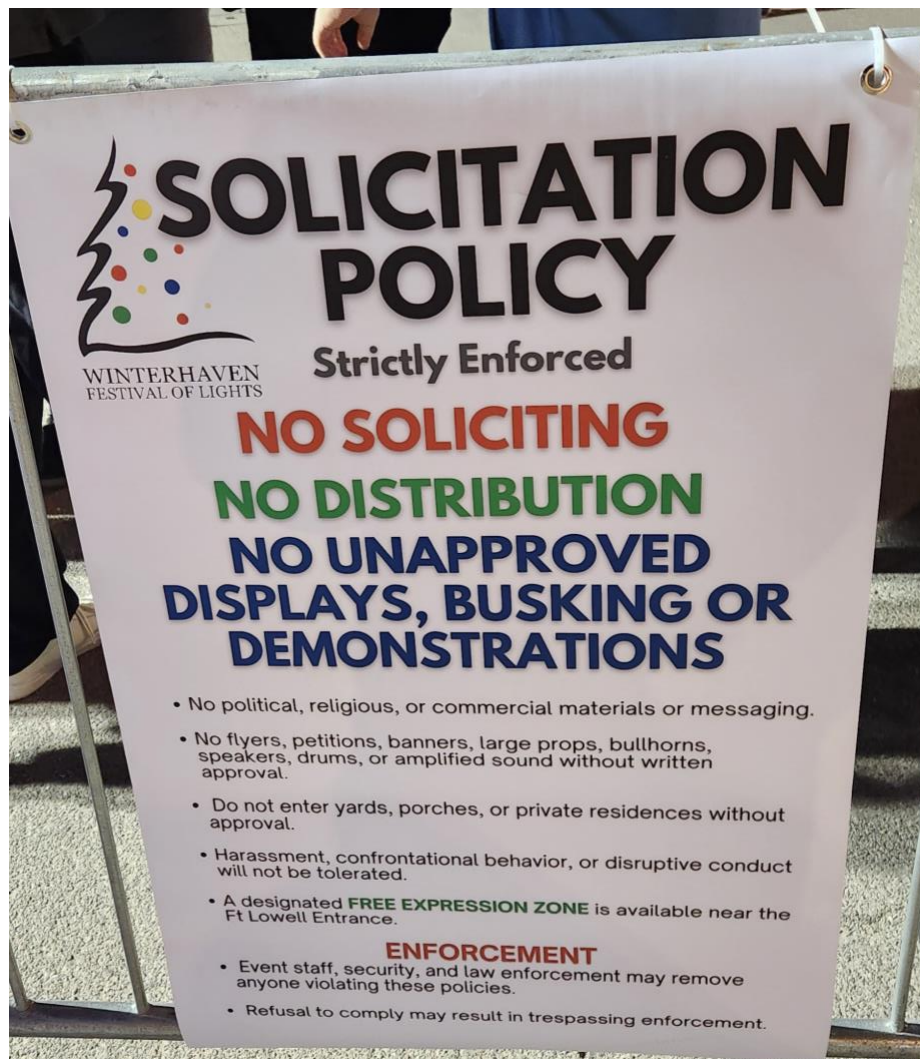
The festival of lights is an annual holiday event occurring on the public streets, sidewalks, and rights-of-way of the historic Winterhaven neighborhood in Tucson, Arizona. Each year, the general public is invited to walk through the public ways that wind through the neighborhood to take in and enjoy light displays, food and drink supplied by local vendors. This year, the festival is scheduled to run every night between 6:00 PM and 10:00 PM, from December 13 through December 27.

During the event, the public ways within the festival footprint remain free and open to the public. Neither payment nor ticket is needed for entry into the event. Anyone is free to walk through the streets of the Winterhaven neighborhood during the event, just as they could at any other time.

On Saturday, December 13, 2025, Hoffman and a few friends visited the Winterhaven neighborhood in Tucson, Arizona during the festival to share their Christian faith with attendees. Hoffman and the others did not wish to obstruct traffic, nor did they want to sell any items or ask for donations. They only sought to share their earnest beliefs.

Yet, after conducting this religious activity for a short while, City police officers approached Hoffman's group and warned them to halt their expression, citing the

festival's solicitation policy as basis. This solicitation policy, enforced by the City, **prohibits all "political, religious, or commercial materials or messaging."** It also prohibits all displays, demonstrations, flyers, petitions, banners, and amplified sound within any portion of the festival route:



The police officers advised Hoffman that his group's religious messaging was relegated to the confines of a free speech zone, titled "Designated Space for Peaceful Messaging and Literature Distribution," a small space set up outside of the festival footprint near Fort Lowell Road. They further threatened Hoffman with arrest and a charge of trespass for failing to comply with the City-backed policy.

Fearing arrest, Hoffman and his group forsook their speech inside the festival. But they wish to resume sharing their faith for the remainder of this year's festival, and all future Winterhaven Festivals. Through counsel and this letter, they hope to resolve this conflict without resorting to litigation.

LEGAL ANALYSIS

The City's bar on Hoffman's protected religious expression in public ways violates his right to free speech.

Hoffman's means of evangelistic speech, literature distribution and oral expression, are fully protected under the First Amendment. *Murdock v. Pennsylvania*, 319 U.S. 105, 110 (1943) (“[S]preading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations” is protected). And, public streets, being the “prototypical example of a public forum,” are ideal places to have this expression. *NAACP, W. Region v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984); *see also Hague v. CIO*, 307 U.S. 496, 515 (1939) (“Wherever the title of streets . . . may rest, they 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.”).

The presence of the festival does not alter the streets' entrenched status as traditional public fora. 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 status during events and festivals that are free and open to the public—regardless of the existence of a permit. *See, e.g., Startzell v. City of Philadelphia*, 533 F.3d 183, 196 (3d Cir. 2008) (city streets and sidewalks are public fora during public festival); *Johnson v. Minneapolis Park & Recreation Bd.*, 729 F.3d 1094, 1098 (8th Cir. 2013) (public park remains public 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 a traditional public forum, speech restrictions can survive only if they are content-neutral, narrowly tailored to serve a significant government interest and leave open ample means of alternate communication. *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 45 (1983). The expulsion of Hoffman's speech from the festival route fails every aspect of this test. “[I]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). Here the City's blanket bar against all religious (as well as political) messaging within the public ways of the festival is an obvious content-based measure. Moreover, by sequestering all “religious . . . materials or messaging” to a fenced-off area outside

of the festival, the City restricts far more speech than necessary to serve any legitimate interest. Nor is a flat ban on literature distribution and oral expression from city streets and sidewalk narrowly tailored. *See Grace*, 461 U.S. at 183 (holding that a ban on leafletting and signs from a public sidewalk outside of the Supreme Court building was not narrowly tailored: “A total ban on that conduct is no more necessary for the maintenance of peace and tranquility on the public sidewalks surrounding the building than on any other sidewalks in the city.”); *see also Bays v. City of Fairborn*, 668 F.3d 814, 823 (6th Cir. 2012) (doubting that city had significant interest in enforcing festival rule banning unauthorized leafletting, oral expression, and display of signs during a festival in a park, and holding the restriction was not narrowly tailored); *Lederman v. United States*, 291 F.3d 36, 44-46 (D.C.Cir. 2002) (invalidating ban on “demonstrations” including “leafletting” and “speechmaking” on sidewalks around capitol building). Additionally, the restriction does not leave ample alternatives for the speech, as Hoffman and his team are prohibited from engaging in any form of expression where they can reach an audience within the festival route. “[O]ne 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 v. New Jersey*, 308 U.S. 147, 163 (1939).

The City’s bar on Hoffman’s religious activity is also an unconstitutional restriction on his right to freely exercise his religion.

“[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)). “A law can reveal a lack of neutrality by protecting secular activities more than comparable religious ones.” *Roberts v. Neace*, 958 F.3d 409, 415 (6th Cir. 2020); *see also Tandon v. Newsom*, 593 U.S. 61, 63 (2021) (stating that California’s treatment of some comparable secular activities more favorably than religious activities, and its failure to justify the reach of its measures, was a principle that dictated the outcome of the case: state’s COVID policies were unconstitutional restrictions of plaintiff’s free exercise rights). Here, the City explicitly isolates and targets religious expression for exclusion. All religious messaging, including oral evangelization, is banned from the festival footprint while other messaging is allowed. Thus, the enforcement imposes an intolerable burden on Hoffman’s right to free exercise.

And finally, the City’s treatment of Hoffman represents a blatant violation of his rights under Arizona’s Religious Freedom Restoration Act (RFRA). RFRA prohibits any government entity, including a municipality, from “substantially burden[ing] a person’s exercise of religion,” except where the government agency demonstrates that the burden is (1) in furtherance of a compelling governmental interest; and (2) the least restrictive means of furthering that compelling governmental interest. Ariz. Rev. Stat. § 41-1493.01. The City has no legitimate,

much less compelling, interest in banishing oral and written dissemination of any message deemed religious from a public way and to a secluded zone. Nor can the forced removal of all religious messaging qualify as the least restrictive means for addressing warranted concerns.

DEMAND

The City's exile of Hoffman's religious speech from a traditional public forum violates his First Amendment speech and free exercise rights, as well as state law. To resolve this concern, Hoffman requires immediate relief, namely, written assurance from the City that it will no longer enforce its policy to banish religious speech to a speech zone within the City's public rights-of-way during the remainder of this year's Festival, and future Festivals.

Because Hoffman and his friends want to share their faith during this year's Winterhaven Festival of Lights, we ask that you respond to this letter in writing no later than end of business day Friday, December 19, 2025. If we do not hear from you by this date, we will assume the City intends to continue with its unconstitutional banishment of Hoffman's speech, leaving legal action as his sole recourse.

Sincerely yours,



Nathan W. Kellum
Senior Counsel
First Liberty Institute



cc: David Hoffman

