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August 10, 2020

Commander Nick Kozloski
Department of Public Safety
2155 Holmgren Way
Ashwaubenon, WI 54304

Mary Kardoskee
President, Village of Ashwaubenon
2410 South Ridge Road
Green Bay, WI 54304

Re: July 15, 2020 Invoice to Hannah Lundin for
Expenses Related to the July 14, 2020 BLM Rally

Dear Hon. President Kardoskee and Commander Kozloski:

The Village of Ashwaubenon mailed Hannah Lundin an invoice for nearly \$800.00 for suggesting on social media that people gather on July 14th to show support for the Black Lives Matter (“BLM”) movement. This action is a clear violation of the First Amendment and a deliberate effort to prevent any future BLM protests in the Village. The charges require a blatant misapplication of Village ordinances—without known precedent—that demonstrate the Village’s bias against these protests. The actual expenses are arbitrary, bearing no relation to reimbursing the Village for any actual expenses. Instead, the charges are punitive in nature and serve no purpose but to warn people not to engage in BLM political speech in Ashwaubenon. The message is crystal clear: engage in political speech at your own peril – it may cost you if the Village doesn’t like it.

Since George Floyd was senselessly murdered by police in Minneapolis on May 25, 2020, people all over the country have come forward screaming that enough is enough. Deaths of people of color at the hand of those sworn to protect them are uncountable – Breonna Taylor, Trevan Martin, Joel Acevedo, Jonathon Tubby are but a few of the shameful, long list of people killed by police where race was a significant factor. Spontaneous public outcries demanding reform have broken out on a regular basis across the country and in the Green Bay area. People are committed to the idea that George Floyd’s death will not be forgotten nor swallowed by the national news cycle, but will remain front and center in the public consciousness until real reform happens.

Ms. Lundin contributed her energy to keeping the message alive by suggesting that the BLM message be taken to Ashwaubenon, an overwhelmingly white community. You responded by labeling her an “organizer” of an event akin to the Cellcom Marathon and charged her for invented expenses related to a small protest that grew out of social media. The inescapable conclusion is that the Village wanted to send a message that any future BLM activity was not welcome.

First, we are aware of no other similar “event” that was classified as a “special event” after the fact and singled out for charges. This alone suggests special treatment targeting political speech. This alone requires the Village to rescind the invoice.

Second, a gathering of like-minded citizens is not a “special event” under § 6-11-456 of the Village code. You admit as much when you place the July 14 protest in the same category as the Cellcom Marathon and Bellin Half-Marathon. This was not a “parade, run/walk event, exhibition, march/ceremony, or any similar display.” *Id.* (emphasis supplied). Nonetheless, the Village seeks to make this provision suit its needs. It does not.

Even if the “special event” provision could be applied to a spontaneous gathering to express political views, the provision would be facially unconstitutional. A “special event” permit requires at least forty-five days’ notice, with no exceptions. This cannot apply to political demonstrations (and further suggests it was never intended to do so). Advance notice provisions “drastically burden free speech.”¹ Even if the July 14th protest were covered by the Village’s definition, the 45-day notice requirement would prove fatal.² Calling the protest a “special event” after the fact does not fix this defect.

Finally, the invoice charged to Ms. Lundin bears no resemblance to the actual costs of any activity by the protestors on that day. This fact more than any other exposes the Village’s action for what it is. The sole effect (and we submit sole intended purpose) was to put the public on notice that people may be charged for exercising their right to speak if the Village happens to dislike what they say. “Freedom of speech, freedom of press, freedom of religion are available to all, not merely to those who can pay their own way.”³ Speaking one’s mind in Ashwaubenon should not be a gamble on whether the Village agrees with you the next day.⁴

Here, the Village attempts to claim that it incurred the expenses of two officers for two hours each at an hourly rate of \$147.74 or a total of \$590.94. But there is no reason to believe, and the Village offers none, that these officers were only called to duty in response to the protest. Rather

¹ *Grossman v. City of Portland*, 33 F.3d 1200, 1206 (9th Cir. 1994)(citations omitted); see also *American-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 605 (6th Cir.2005)(“[a]ny notice period is a substantial inhibition on speech.”).

² See *Church of the American Knights of the Ku Klux Klan v. City of Gary*, 334 F.3d 676, 682 (7th Cir. 2003) (noting “the length of the required period of advance notice is critical to its reasonableness; and given... that political demonstrations are often engendered by topical events, a very long period of advance notice with no exception for spontaneous demonstrations unreasonably limits free speech” (internal quotation omitted)); see also *American-Arab Anti-Discrimination Comm.*, 418 F.3d at 605-07 (holding 30-day notice provision overbroad); *NAACP, Western Region v. City of Richmond*, 743 F.2d 1346, 1357 (9th Cir.1984) (“[A]ll available precedent suggests that a 20-day advance notice requirement is overbroad.”); *Douglas v. Brownell*, 88 F.3d 1511, 1523-24 (8th Cir.1996) (holding even five-day notice provision insufficient under the facts).

³ *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1993).

⁴ As Justice Kennedy famously observed: “The First Amendment is often inconvenient. But that is beside the point. *Inconvenience does not absolve the government of its obligation to tolerate speech.*” *International Society for Krishna Consciousness v. Lee*, 505 U.S. 672, 701 (1992) (Kennedy, J., concurring in the result) (emphasis supplied).

the Village is attempting to make Ms. Lundin pay the salary of two officers who were already on duty and simply handling traffic, which is part of their every-day activity. The Village can point to no additional financial expense it paid in any way attributable to the protest. The Village does not even attempt to justify or explain the \$172.48 charge for “Special Event Charges – Street.”⁵ “[A] government cannot profit from imposing licensing or permit fees on the exercise of a First Amendment right.”⁶

The invoice to Ms. Lundin is impermissible and punishes her for protected speech. It is a transparent scare-tactic to keep similar future speech out of Ashwaubenon. I expect the Village to cancel this invoice with all due speed. I look forward to hearing from you.

Very Truly Yours,



David R. Hassel

Via email

cc: Tony Wachewicz, Village Attorney
GB Press Contacts

⁵ It also bears note that the Village grossly overstates the amount of time the protest disrupted traffic. Rather than the two solid hours it claims, interruptions were brief and sporadic at best. Radio station WTAQ reported “[a] few dozen” protestors blocked an intersection before “the area was quickly reopened.”

<https://www.newsbreak.com/wisconsin/oneida/news/1600493080292/black-lives-matter-protesters-demonstrate-on-oneida-street> (visited Aug. 5, 2020). Fox11 News reported that “[d]emonstrators marched for a short time down Lombardi Avenue and Holmgren Way,” including a picture showing no police efforts needed in directing traffic. <https://fox11online.com/news/local/jonathon-tubbys-name-chanted-during-black-lives-matter-rally> (visited Aug. 5, 2020)(emphasis supplied).

⁶ *Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007) (citing *Murdock*, 319 U.S. at 113-14); accord *Citizens Action Grp. V. Powers*, 723 F.2d 1050, 1056 (2d Cir. 1983) (holding city could not assess charges beyond actual expenses).