



June 15, 2010

Eastern Region Office
PO Box 40008
Philadelphia, PA 19106
215.592.1513 T
215.592.1343 F

By tele-fax (717-772-4171)

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717.238.2258 T
717.236.6895 F

Kimberly A. Hummel, Esq.
Chief Counsel for Conservation and Natural Resources
Governor's Office of General Counsel
P.O. Box 8767
Harrisburg, PA 17105

Western Region Office
313 Atwood Street
Pittsburgh, PA 15213
412.681.7736 T
412.681.8707 F

RE: Political Activity in Point State Park and 17 Pa. Code § 11.213.

Dear Ms. Hummel:

Thank you for your June 10, 2010, letter responding to my June 7 correspondence to Frances Stein regarding her interference with small-group political activities at Point State Park. It is clear from your letter that Ms. Stein was merely enforcing a DCNR regulation entitled "Organized events; public assemblies; distribution of printed matter." 17 Pa. Code § 11.213.

It is also clear that 17 Pa. Code § 11.213 is facially unconstitutional. It establishes a prior restraint on a broad range of expressive activities, and does so without any exception for individuals or small groups. Federal courts have invariably held that similar advance-notice and permit requirements that fail to exempt individuals and small groups violate the First Amendment because they are both substantially overbroad and not narrowly tailored.¹ Regulations, such as DCNR's, impose "procedural [and] temporal hurdles" that exact "too high a cost" on free expression.²

¹ See, e.g., *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1039 (9th Cir. 2006) ("Without a provision limiting the permitting requirements to larger groups, or some other provision tailoring the regulation to events that realistically present *serious* traffic, safety and competing use concerns, significantly beyond those presented on a daily basis by ordinary use of the streets and sidewalks, a permitting ordinance is insufficiently narrowly tailored to withstand time, place and manner scrutiny") (emphasis in original); *American-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005) ("Permit schemes and advance notice requirements that potentially apply to small groups are nearly always overly broad and lack narrow tailoring"); *Cox v. City of Charleston*, 416 F.3d 281, 285-86 (4th Cir. 2005) (permit requirement for as few as two demonstrators "constitutionally infirm"); *Douglas v. Brownell*, 88 F.3d 1511, 1524 (8th Cir. 1996) (expressing doubt that permit requirement was narrowly tailored when it applied to groups as small as ten); *Grossman v. City of Portland*, 33 F.3d 1200, 1206 (9th Cir. 1994) (lack of small-group exception for political activity in urban parks unconstitutional); *Community for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1392 (D.C. Cir. 1990) (permit requirement for any "organized exercise of rights" on Transit Authority property unconstitutional).

² *Cox*, 416 F.3d at 285.

Kimberly A. Hummel, Esq.

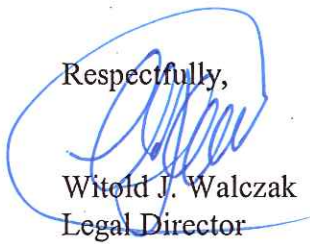
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Since our clients wish to continue to engage in political and artistic expression in Point State Park we must insist that you advise us by the close of business today whether you will agree to suspend statewide enforcement of this regulation pending further review. Please feel free to contact me at 412-681-7864 if you wish to discuss this matter. If we do not hear from you by the appointed deadline we will construe your silence as a refusal of this request and will take necessary legal action to protect our clients' rights. Thank you.

Respectfully,



Witold J. Walczak
Legal Director

cc: Scott Bradley, Esq. (by e-mail)
Daniel Regan, Esq. (by e-mail)