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Daniel Knorr, Mayor  
Diane Levan, Vice President  
Bloomsburg Town Council  
Town Hall  
301 E. Second Street  
Bloomsburg, PA 17815

AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION  
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VIA FACSIMILE 570-784-1518

Re: Outdoor Social Gatherings Ordinance

Dear Mayor Knorr and Vice President Levan:

The American Civil Liberties Union of Pennsylvania (ACLU-PA) writes this letter to caution the Town of Bloomsburg against passing the current draft of the “Outdoor Social Gatherings Ordinance.” Although Bloomsburg aims to address legitimate concerns regarding the health, safety and welfare of the community when outdoor social gatherings grow unruly, the Ordinance, as drafted, violates several First Amendment principles. Furthermore, we urge Bloomsburg to repeal or amend Ordinance No. 857 (“Permits for Large Outdoor Social Gatherings where Alcoholic Beverages are Served or Consumed” § 13-401, et seq., Bloomsburg Code) because this ordinance similarly infringes upon constitutional rights.

Both ordinances are overbroad. By requiring government permission to host private gatherings on private property, the ordinances burden a wide range of constitutionally protected activities, such as gathering for political, religious and family purposes. In addition to protecting political speech, religious worship, and a wide range of artistic and other expressions, the First Amendment protects a person’s right to freely attend gatherings in furtherance of such goals—one’s right to freely associate. *See, e.g., Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000) (“implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic,

educational, religious, and cultural ends.”)

Both ordinances unconstitutionally hinder these protected associations. For example, before a couple may host a wedding reception in Bloomsburg, they must obtain permission from the government, if they plan to invite more than 150 guests and serve alcohol. This unconstitutionally burdens free association with their families, a fundamental right. *See, e.g., Lyng v. Castillo*, 477 U.S. 635, 638 (1986) (recognizing choice of family living arrangements as a fundamental right). Even a Catholic Mass, held in a Bloomsburg church, would require government permission. By encompassing such activities when they include alcohol, the ordinances actually prohibit far more than wild parties; they burden constitutionally protected activities. “A law or regulation is invalid on its face under the overbreadth doctrine if it ‘does not aim specifically at the evils within the allowable area of control [by the government] but . . . sweeps within its ambit other [constitutionally protected] activities.’ *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940).” *Waterman v. Farmer*, 183 F.3d 208 (3d Cir. 1999).

Secondly, both ordinances impose “prior restraints” on First Amendment activities. When a government requires permits before protected activity may take place, it “carries a heavy burden of showing justification for the imposition of such a restraint.” *Capital Cities Media, Inc. v. Toole*, 463 U.S. 1303, 1305 (1983). Permitting schemes that burden First Amendment activities are only constitutional when, among other things, the government has an important reason for requiring advance permits—to ensure proper policing at a large demonstration or to allow only one parade at a time, for example. *See, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969) (parade); *Cox v. Louisiana*, 379 U.S. 536 (1965) (demonstration). It is difficult to imagine that Bloomsburg can provide a sufficiently important justification for requiring advance notice of a Catholic Mass or private wedding held on private property.

Rather than continue with its unconstitutional permitting scheme, the Town of Bloomsburg could address unruly gatherings through enforcement of criminal laws, noise ordinances and the like. *See, e.g., 18 Pa.C.S. §§ 3304* (prohibiting property damage), 5503 (prohibiting disorderly conduct), 5505 (prohibiting public drunkenness), 6308 (prohibiting underage drinking). Individuals who attend private events to exercise First Amendment rights are not immune from prosecution under such laws.

In conclusion, the ACLU-PA suggests that the Town of Bloomsburg amend Ordinance No. 857 by enacting a version of its proposed “Outdoor Social Gatherings Ordinance” tailored to exclude from its permitting scheme social gatherings held to further political views, religious practice, familial association and other activities protected by the First Amendment. To limit the reach of the permitting scheme to “an outdoor congregation of persons for social interaction where alcoholic beverages are served or consumed and which is attended at any one time by more than 150 persons, regardless of age”<sup>1</sup> does not go far enough. Large social interactions and alcohol consumption may take place, for example, in the course of practicing one’s religion or expressing political viewpoints. It is doubtful that any government may lawfully require anyone

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<sup>1</sup> Both ordinances define “regulated social gathering” in this way.

to obtain a permit before engaging in these activities on private property in America. If you would like to discuss further the ACLU-PA's constitutional objections to the ordinances, please contact us at 717-236-6827 extension 12.

Sincerely,

A handwritten signature in black ink, appearing to read 'Valerie A. Burch', with a long horizontal flourish extending to the right.

Valerie A. Burch  
Staff Attorney

Witold J. Walczak  
Legal Director