

April 28, 2023

Brian W. Riley
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Ruth A. Bourquin, Esq. (rbourquin@aclum.org)
American Civil Liberties Union Foundation

Re: Town of North Brookfield – RJN Event on June 24, 2023

Dear Attorney Bourquin:

I am following up on our previous conversations on this subject and Rural Justice Network's ("RJN") proposed Small Town Pride event on the North Brookfield Town Common on June 24, 2023, and I wish to clarify the confusion regarding it. I am also sending this letter to you as a public document and to reiterate the Town's position on the matter. As you know, after a representative of RJN initially addressed the Board of Selectmen ("BOS") in late February, Corwin Castonguay and Tashena Holmes were before the BOS on March 28, 2023, seeking whatever approval was needed for this event on the Town Common and requesting certain "resources" for the event. I have not seen the request, but you informed me it was to have a food truck onsite (said truck should contact the Board of Health to see if any permit is required), access to electricity and to utilize a portion of the adjacent Police Station parking lot. While some members of the Board expressed trepidation over aspects of the event, specifically a drag performance, the Board ultimately voted 2-1 to give authorization to use the Common on June 24 as proposed. The Board made the vote contingent on receiving a certificate of insurance from RJN and for a police detail to be hired (more on these below). Mr. Castonguay stated that these conditions were acceptable.

On April 11, however, the Board took another vote to authorize the event but without the drag performance. After considering your letter dated April 18 and my own discussions with Board members, the Board met again on April 25 and took two votes. The first, which was approved by a vote of 3-0, was to rescind the April 11 vote that withdrew authorization for a drag performance. The second motion was to "reapprove" the event as originally proposed; this vote was one in favor and two abstentions. When Selectboard member Canada asked whether the event was still authorized, the chair answered "yes."

I first note that as a matter of procedure and Massachusetts law, a vote of one in favor and two abstentions on a three-member board is essentially a nullity and does not pass. However, the result of the April 25 meeting is that the vote taken on March 28 has not been rescinded or otherwise altered (since the Board expressly rescinded the April 11 vote). As such, the RJN event remains authorized consistent with that March 28 vote. I am aware that certain comments of Board members at the meeting and that have later appeared in the press have caused your client concern as to whether the event is still approved. It is my intention by this letter to state that the March 28, 2023 vote of the Board remains in place, approving your client's use of the Town Common as originally proposed. While some Board members expressed their personal opinions of aspects the event, as is

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of course their right, the action the Board of Selectmen took on March 28 is what represents the formal action of the Town government.

I note additionally that when the Chair stated on April 25 that “no approval is needed,” he was referring to the fact that while a parade on public ways, for example, requires a permit from the Board under Town bylaws (due to street closings, etc.), there is no such “permit” requirement under the General Bylaws for an event like this – rather, the Board may authorize an event to have exclusive use of a piece of Town property (exclusive in the sense of another event not being authorized at the same time, clearly the public may come and go on the Common in the normal fashion).

I trust my statements above will enable RJN to feel confident that it may proceed with planning for the June 24 event and that there is no need for further insinuations of litigation regarding this matter. I assure you that I have impressed on the Board members that it is in everyone’s best interest to leave the March 28 authorization in place, and that is the status.

As noted above, the Board did state in its motion of March 28 that the authorization was contingent on RJN providing a certificate of insurance and a police detail for the event. As I previously advised you, it is KP Law’s policy to always advise our municipal clients that if there is any type of privately sponsored sizeable event sought to be conducted on city or town property, we strongly recommend that the private party or group provide a certificate of insurance naming the municipality as an additional insured. This requirement was not made due to the content of the RJN event, but only as sound policy for the Town’s protection for any private event on the Town Common. We are not asking that RJN insure the Town against actions or events beyond RJN’s control, but for coverage such as Mr. Castonguay informed the Board that RJN has provided to multiple other municipalities to cover similar events.

I would state the same position for the police detail, that it was not requested due to the what the event is about but as a matter of course for sizeable events on the Town Common, regardless of what group is sponsoring it. For example, on the upcoming Memorial Day weekend (as on the same weekend in prior years), there will be a carnival on the Town Common, sponsored by the private Coalition for a Healthy North Brookfield with carnival attractions by Rockwell Amusement and Promotions, Inc. In order to protect the Town and Town Common, as well as attendees, the Board requires a certificate of insurance and a paid police detail for this event. I offer this as an example to show that the insurance and police detail requirements the Board voted on March 28 were not imposed due to the nature or expressive content of RJN’s event, but rather as a matter of course for privately sponsored events on the Town Common. I would also note again that RJN’s representatives agreed to both conditions on March 28.

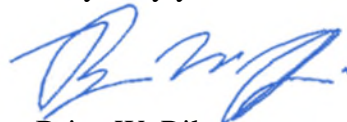
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As stated above, I hope your client will feel comfortable that the June 24 event has the authorization needed from the Board of Selectmen. RJN should contact the Board of Health regarding the food truck, bathroom facilities and any other practical aspects of having a successful event.

Very truly yours,



Brian W. Riley

BWR/awl

cc: Board of Selectmen

Board of Health

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