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TO: VEGAN OUTREACH
FROM: AMERICAN LIBERTIES INSTITUTE
RE: *Free speech activity and objections by individuals*

I. INTRODUCTION

Our organization provides legal services to individuals who distribute free literature in public venues. Although some may object to the literature, it should be recognized that the Supreme Court of the United States encourages "robust" freedom of speech. While exercising their free speech rights by speaking to the public and distributing free literature, some staff members have encountered objections to the photographs used in the literature.

Our client intends to continue distributing free literature in public venues. The following summary details the legal basis for our position that an individual's objections to the content of literature does not support censoring the message. Please review the material below and contact our office if you have any questions.

II. SUMMARY OF THE LAW

The Supreme Court of the United States has held that courts must apply a tripartite analysis for evaluating free speech cases. They must: (1) determine if the speech in question is protected under the First Amendment; (2) identify the nature of the forum in which the speech would take place; and, (3) assess whether the government's exclusion of the speech from the forum is justified by the requisite standard. See *Cornelius v. NAACP Legal Defense and Educ. Fund,* 473 U.S. 788, 797 (1985).

First Amendment precedent contemplates three types of government property – or fora – in which speech occurs: (1) traditional, (2) designated or limited, and, (3) non-public. See *Cornelius*, 473 U.S. at 802. It is well settled that public streets, public sidewalks, public squares, public parks, public grounds and other public right-of-ways are the "quintessential" public fora. *Frisby v. Schultz*, 487 U.S. 474, 481 (1988). The First Amendment guarantees the utmost protection in traditional public fora.

"Wherever the title of streets and parks 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. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens." *Hague v. C.I.O.,* 307 U.S. 496, 515 (1939). The Supreme Court has been consistently clear that traditional public fora occupy "a special position in terms of First Amendment protection" and "the government's ability to restrict expressive activities [in it] is very limited.'" *Boos v. Barry*, 485 U.S. 312, 318 (1988) (quoting *United States v. Grace*, 461 U.S. at 171, 180 (1983)).

The extent to which the government may limit or exclude speech and assembly from a forum depends upon whether its justification for exclusion satisfies the requisite standard of constitutional scrutiny for that forum. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). Short of total exclusion of the speaker, the government may impose reasonable time, place, and manner restrictions on speech in traditional public fora. See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

In order for a time, place, and manner restriction on expressive activity in traditional public fora to pass constitutional muster, the restriction must: (1) be content-neutral; (2) serve a significant governmental interest; (3) be narrowly tailored to serve that interest; and, (4) leave open ample alternative channels of communication. See *Grace*, 461 U.S. at 177. Within traditional public fora, "the government's ability to permissibly restrict expressive conduct is very limited." *Id*., at 177 (citations omitted). Within "traditional public fora, the government's authority to restrict speech is at its minimum." *Gaudrya Vaishrava Soc'y v. City and County of San Francisco,* 952 F.2d 1059, 1065 (9th Cir. 1991). In the realm of First Amendment rights, the presumption of constitutionality usually accorded legislative decisions does not apply. See *Hickory Fire Fighters Ass'n v. City of Hickory, N.C.*, 656 F.2d 917, 923 (4th Cir. 1981); *Blasecki v. City of Durham, N.C.,* 456 F.2d 87, 91 (4th Cir. 1981), *cert. denied,* 409 U.S. 912 (1972).

Any attempt to enforce censorship based upon objections to the content would fail the content-neutral prong. Our client's pamphlets obviously do not contain anything pornographic, but one pamphlet does have one page in the pamphlet which shows slaughterhouse pictures. Although some parents may feel that these pictures are too graphic for anyone under eighteen, the pictures are merely graphic, they are not obscene. As such, they cannot be censored merely because some people might find offense. Our client fully respects the rights of others and will never seek to harm any person through the peaceful distribution of free literature. The public should also respect our client's rights to express the message without interference.

Thank you for your anticipated cooperation.

Sincerely,
s/Frederick H. Nelson
Frederick H. Nelson, Esq.

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