

TOWNSHIP OF MAPLEWOOD



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MEMORANDUM

TO: TOWNSHIP COMMITTEE

RE: Maplewoodstock – First Amendment Issue

DATE: November 21, 2019

The questions posed are: 1). Whether event organizers can deny booth applications to vendors because the vendors do not fall within the event's criteria; 2). Whether canvassers can be prohibited from walking through the event. Regarding the first issue, event organizers can deny booth applications if the applicant does not fall within the event's criteria. Regarding the second question, canvassers cannot be prohibited from entering the event.

Startzell is a case regarding protestors suing the police, the city, and the event permit holder in the third circuit. *Startzell v. City of Phila.*, 533 F.3d 183 (3d Cir. 2008). Philly Pride Presents (hereinafter, Philly Pride) obtained a permit from Philadelphia for its OutFest (celebrating National Coming Out Day). *Id.* at 189. Similar events are held all over the country. *Id.* The permit obtained allowed Philly Pride to close off the streets where the festival took place; the event included stages, sport areas, flea market, and playing vendors. *Id.* The event was free and open to the public. *Id.*

On prior occasions, Appellants, eleven Christian affiliated members belonging to an organization known as Repent America, had attended these gay pride events to spread their anti-gay message. *Id.* Prior to OutFest, the leader of Repent America, announced that he hopes that "OutFest will come to an end." *Id.* As a result, the attorney for Pride Philly sent a letter to the Chief Deputy City Solicitor to prevent Repent America members from accessing the blocked streets for the event. *Id.* The city rejected the request because the event was occurring on public grounds so the protestors can bring their bullhorns and protest as long as they do not break any law. *Id.* at 190. Thus, Philly Pride claimed they would use volunteers (Pink Angels) to block the signs carried by the protestors; the city did not object to this. *Id.*

During the day of the event, the protestors came with their signs and bullhorn and proceeded to enter the premises. *Id.* However, the Pink Angels formed a human chain to prevent the protestors from entering. *Id.* The police threatened the Pink Angel with arrest if they did not let the protestors in. *Id.* Then, the protestors entered and loudly relayed their message. *Id.* at 191. The Pink Angels surround them with their signs and whistles. *Id.* Once the music performances started, the Captain told the protestors to move

further up the street as to not block the stage. *Id.* The protestors were again told to move further because they were blocking the vendor booths. *Id.* Protestors refused to move so they were placed under arrest. *Id.*

It is undisputed that the protestors deserved constitutional protection and the place where OutFest took place was a public forum. *Id.* at 192. This court analyzed *Hurley* where the Supreme Court held that the parade organizers are entitled to exclude messages that do not align with their message because allowing so would violate the parade organizer's First Amendment rights. *Hurley v. Irish-American Gay*, 515 U.S. 557, 573-74 (1995). Here, *Hurley* would have been applicable if the protestors were asking for a booth at the festival. *Startzell*, 533 F.3d at 194. Rather, the question presented is whether Philly Pride can exclude the protestors from entering; this court holds that they cannot. *Id.*

Many sister circuits have held that local policy that allows permit-holders sponsoring an event in a public place to exclude others who express contrary messages, would be in violation of the First Amendment. *Id.* at 195. See also *Gathright v. City of Portland*, 439 F.3d 573 (9th Cir. 2006) (where the court held the city could not prohibit Christians from wearing or passing out pamphlet at a public location where there was an event allowed by a town permit.); *Parks v. City of Columbus*, 395 F.3d 643 (6th Cir. 2005) (where the court held the plaintiff could attend a festival that had permit and walk through it with a sign relaying a religious message. *Hurley* is distinguishable because the plaintiff did not seek to be included in the speech of another group.). *Parks* held that the city cannot allow one's First Amendment rights to disappear at an event that is free and open to the public. *Parks*, 395 F.3d at 652. Thus, the protestors were allowed at Philly Pride's event.

While the state is limited in how much it can restrict speech in a public forum, the state can take action to maintain public order. *Startzell* 533 F.3d at 197. While the protestors cannot be excluded from the public space, they are not free to go anywhere they would like in that area. *Id.* To determine if the restriction is content neutral, the court looks at whether the government action is "justified without reference to the content of the regulated speech." *Id.* (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). Here, the court found that the police acted due to the context, not the content of the speech. *Id.* Those protesting cannot cause disruption at a permit event. *Id.* at 198. Next, the court looks at whether the speech was narrowly tailored to serve a significant government interest and whether there were other channels of communication. *Id.* at 201. Here, the police did not ban the protestors; rather, the police allowed them to enter the premises. *Id.* at 202. The only time the police restricted the protestors was when the protestors insulted the attendees, blocked access to the booths, and disobeyed police orders. *Id.* Finally, the court looks at whether there were alternative means of communication. *Id.* The protestors had other methods of communicating, such as smaller signs, distribute pamphlets without saying derogatory things, and move through the crowd without blocking access to the vendors. *Id.* Thus, the city's actions were justified. *Id.* at 203.

From the above analysis, Maplewoodstock would be able to prevent canvassers and other organizations from receiving an event booth. However, the event organizers would not be able to prevent the canvassers from walking through the park, spreading their message in a non-disruptive way. *Hurley* is applicable to the first issue here because that case held event organizers can reject an application to joining their event if the applicant does not meet their standards. *Startzell* is applicable to the second question because *Startzell* held that protestors are allowed to enter an event that is held on public property. This is furthered by the court in *Parks* that held the protestor may enter the event with a religious sign.

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