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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
MAGISTRATE DIVISION

THE STATE OF IDAHO

Plaintiff,

vs.

TITUS N FOLKS,

Defendant.

CASE NO. CR14-26-10419

MOTION TO DISMISS

COMES NOW, CHRISTOPHER BOYD, Canyon County Prosecuting Attorney, and hereby moves this Court to dismiss the above-captioned matter in the interest of justice. This motion is made and based upon the protections of the First Amendment to the Constitution of the United States.

In this case, specific areas of Lakeview Park in Nampa, Idaho, were reserved with the City of Nampa for a specified time by the organizers of an event. Those reserved areas “included a fenced area off of Americana Blvd and a parking area that stretched to 16th Ave.” See Police report. During the event two men, one of which was later identified as Titus Folks, set up a table

within the reserved area, but outside the fenced area. They were speaking with event participants and attempting to hand out flyers. They were asked by event organizers to leave. When they did not leave, the organizers summoned law enforcement, who also asked them to leave.

The officers informed Mr. Folks that the event organizers had “the right to tell anyone they don’t want to be here not to be here.” See Police Body Camera. The officers explained that the area was reserved and told them they could set up their table outside the reserved area. Folks asked what would happen if they did not move, and the officer explained that he would be cited for trespassing. Folk asked to receive a citation, and the officer obliged. The infraction case is currently pending court trial.

The question considered by the Canyon County Prosecuting Attorney was whether the police order to Mr. Folks was consistent with the speech protections of the First Amendment. Because the event was advertised as open to the public and was in a location that is traditionally a public forum, Folks could not be properly excluded for the content of his speech.

The Idaho Supreme Court has consistently held that a desire or attempt to exercise one’s right to speech does not trump a property owner’s right to exclude individuals under trespass laws, even where the property owner is the government. *State v. Bundy*, 175 Idaho 448, 566 P.3d 445 (2025); *State v. Korsen*, 138 Idaho 706, 713-16, 69 P.3d 126, 133-36 (2003), *overruled on other grounds by Evans v. Michigan*, 568 U.S. 313 (2013). So long as the government actor is differentiating based on **conduct**, and not **speech**, the First Amendment is not violated. *Id.*

When an arrest and conviction are for non-expressive conduct, specifically “being physically present in violation of a notice,” first amendment speech rights are not implicated. *Id.* citing *State v. Clark*, 161 Idaho 372, 377–78, 386 P.3d 895, 900–01 (2016). In *Clark*, the Court adopted the holdings of the Court of Appeals in *State v. Pentico*, 151 Idaho 906, 914, 265 P.3d

519, 527 (Ct. App. 2011) (*Pentico I*) and *Pentico v. State*, 159 Idaho 350, 360 P.3d 359 (Ct. App. 2015) (*Pentico II*), allowing criminal charges and punishments for “‘Pentico's nonexpressive conduct—his entry into the third floor of the Borah Building after receiving notice that he was no longer authorized to be there.’” *Id.* (quoting *Pentico II*, 159 Idaho at 355, 360 P.3d at 364).

This analysis is consistent with precedent from the Supreme Court of the United States. In *Adderley v. State of Fla.*, 385 U.S. 39, 41 (1966), protestors went to a jail to protest segregation at that jail, blocking a driveway for the jail, and refusing to disperse. The Court distinguished *Edwards v. South Carolina*, 372 U.S. 229 (1963), on the basis that *Edwards* involved convictions for disturbing the peace for protesting at the state capitol, while this case involved trespassing at a jail, noting that the capitol was a place traditionally open to the public while the jail was not, and disturbing the peace was likely to encompass speech while trespass did not. *Adderley*, 385 U.S. at 41-42. The Court then cited the lack of evidence that the sheriff instructed the protectors to disperse because of the content of their speech. *Id.* at 47-48. “The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose.” *Id.* at 47-48. *See also Virginia v. Hicks*, 539 U.S. 113, 123 (2003) (“it is Hicks' nonexpressive *conduct*—his entry in violation of the notice-barment rule—not his speech, for which he is punished as a trespasser”).

This case does not fit neatly into the analysis of *Bundy* or the above-cited cases because the party that first excluded him, the permit holders, were not excluding Folks for conduct, but for speech (whether verbal or written). If the permit holders were in the same position as private property owners, then there is clearly no First Amendment violation. However, after a review of the evidence and long-established First Amendment protections set forth by caselaw, the Canyon

County Prosecutor cannot conclude that the permit transferred the right to exclude people from the reserved portions of the park *for their speech*.

In *Gathright v. City of Portland, Or.*, 439 F.3d 573, 575 (9th Cir. 2006), the Court addressed “the intersection of two First Amendment rights: on the one hand, the classic right of an individual to speak in the town square; on the other hand, the interest organizations have in not being compelled to communicate messages not of their choosing.” The ordinances in that case provided it was “unlawful for any person unreasonably to interfere with a permittee’s use of a Park” while the trespass statute in question was largely the same as Idaho’s. *Id.* The court weighed Gathright’s “classic right to preach in the town square” against “the City’s interest in protecting its permittees’ speech from being diluted by what Gathright says.” *Gathright v. City of Portland, Or.*, 439 F.3d 573, 576 (9th Cir. 2006). The court distinguished *Hurley v. Irish–American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 579 (1995), on the basis that it involved excluding “those who wished to *participate* in the parade as marchers, not those who witnessed or opposed the procession.” *Id.* It instead applied the time, place, and manner analysis of *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), and concluded the city’s “policy of allowing permittees unfettered discretion to exclude private citizens on any (or no) basis is not narrowly tailored to the City’s legitimate interest in protecting its permittees’ right under *Hurley*.” *Gathright*, 439 F.3d at 577. The court also distinguished between events open to the public and those limited to invitees. *Id.* at 578-79.

Gathright’s language about the city granting “unfettered discretion” to exclude people to the permit holder is relevant, and the issue upon which the Prosecuting Attorney believes this case hinges.

A yet more relevant analysis can be found in *Parks v. City of Columbus*, 395 F.3d 643 (6th Cir. 2005). That case involved a street preacher preaching at the “Columbus Arts Festival,” a permitted “block party.” *Id.* at 645. Before addressing any government justification, the Court stated it must first address “whether the streets remained a traditional public forum notwithstanding the non-exclusive, block party permit issued to a private organization.” *Id.* at 648. The analysis of this question is “a case-by-case inquiry in which no single factor is dispositive.” *Id.* at 649 (quotation marks omitted). Only after determining whether the streets in question constituted a public forum did the court address whether the government’s rationale justified its actions. *Id.* at 652.

The factors the court considered included whether the property was traditionally a public forum, whether the event was open to the public, and whether the actions in question interfered with the message of another. *Id.* at 648-52. Citing *Bishop v. Reagan-Bush '84 Committee*, 819 F.2d 289, 1987 WL 35970 (6th Cir. May 22, 1987), the court also noted that its public forum inquiry included whether a municipality intended to confer exclusive use and whether it had the power to do so. *Parks*, 395 F.3d at 649-50.

Given the reasoning above, a traditional public forum such as a street or a park is not likely within the exclusive control of the permit holder **where the event is open to the public**. Folks was not excluded for his *conduct*. The officers believed (in good faith undoubtedly) that the event organizers had “the right to tell anyone they don’t want to be here not to be here.” This strongly resembles the unfettered discretion that so concerned the *Gathright* court.

Thus, Folks could only be properly excluded if the reserved portion of the park was no longer a public forum because the permit holders had **exclusive** control of the property such that it was effectively their right to exclude whomever they wanted. Because this event was

advertised and permitted as open to the public in a location that is traditionally a public forum, Folks could not be properly excluded for the content of his speech.

Notably, the officers on scene were tasked with a difficult situation, and the evidence shows that they were intent on kindly and professionally de-escalating, citing Mr. Folks only after he requested to be issued a citation. Nevertheless, the First Amendment does not yield to a permit or a preference. It is the enduring promise of American liberty that no citizen will be silenced in a public forum for the content of his speech.

Accordingly, the state respectfully requests this Court DISMISS the above-captioned case.

DATED this 26th day of August, 2026.

A handwritten signature in black ink, appearing to read 'C. Boyd', is written over a light gray rectangular background.

CHRISTOPHER BOYD
Canyon County Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 26th day of August, 2026, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Isaac Helland
1116 S Vista Ave Ste 227
Boise, ID 83705
isaac@idahofamily.org

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Via Canyon County File Transfer Site
- ☒ EMail



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