

Brū Café, Inc
141 Orange Street
New Haven, CT 06510
203-752-0052

June 7, 2011

Re: Special Events at Pitkin Plaza

To Whom It May Concern,

Long ago the fathers of our country embodied certain inalienable rights in our federal Constitution. These rights...our fundamental freedoms... set forth in the first Constitutional amendment, include the right to freedom of speech, the right of peaceful assembly and the right to petition the Government for a redress of grievances.

These fundamental freedoms have often been beset by challengers seeking to suppress expressive activities that are in opposition to their beliefs or ideals. The history of these challenges, aka constitutional law, is long, torturous and need not be repeated here. For the most part, these challenges have mainly resulted in the amplification and broadening of these freedoms and not their restriction.

To find evidence of this broadening of our fundamental freedoms, one need only look to our State's adoption in the Connecticut Constitution, Article First §§ 4, 5 and 14¹ which provides for greater protection of these fundamental freedoms than the first amendment of federal constitution. *State v. Linares*, 232 Conn. 345, 380-81, 655 A.2d 737 (1995).

For more than two centuries the Connecticut Court system has upheld our fundamental freedoms by protecting the concept that land held by a municipality as a public park is held for the benefit of all residents of the state. Each resident has a constitutional right of access to this land. This constitutional right of access may be restricted only for weighty reasons. Restrictions may not be petty.

To determine whether restrictions are lawful, the Connecticut Supreme Court adopted the "compatibility" test set forth in *Grayned v. Rockford*, 408 U.S. 104, 115, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). Under this test "the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Id.*, 116; see *State v. Linares*, supra, 379. Under this standard, the government cannot restrict a person's access to public property unless that person intends to engage in expressive activity that is "basically incompatible" with the customary use of the property at the time in question. See, *Id.*²

¹ Article first, § 4, of the constitution of Connecticut provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Article first, § 5, of the constitution of Connecticut provides in relevant part: "No law shall ever be passed to curtail or restrain the liberty of speech...."

Article first, § 14, of the constitution of Connecticut provides: "The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance."

² See generally; *Leydon v. Town of Greenwich*, 257 Conn. 318, 348-49, 777, A.2d 552 (2001).

It cannot be denied that Pitkin Plaza has hosted hundreds, if not thousands, of City sanctioned events in the past few years, most of which, if not all, included amplified music up to and after 10:00 p.m.³ These events evidence a customary use of the plaza pursuant to the *Grayned* standard.

Furthermore, there is no question that these events are all constitutionally protected forms of communication.^{4, 5}

The Connecticut Supreme Court has stated “The first amendment in all contexts forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others”. *State v. Linares* , supra. 232 Conn. 345.

It is clear that the City of New Haven’s restriction of our fundamental freedoms is based on the viewpoint of the management of 360 State Street, who are opposed to the longstanding normal and customary use of Pitkin Plaza.

By restricting our fundamental freedoms, the City acts against the very foundations upon which this country was born and in which our forefathers believed. I believe in these freedoms.

Very truly yours,

X Curtis Packer
Curtis Packer
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"If all mankind minus one were of one opinion and only one person were of the contrary opinion, mankind would be no more justified in silencing that person than he, if he had the power, would be justified in silencing mankind If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error." John Stuart Mill, *On Liberty* (1859).

³ The last event held in Pitkin Plaza was hosted by Mayor DeStefano for Ned Lamott which event went well past 8:00 p.m. and included amplified music.

⁴ See, e.g., J. Stevens, "The Freedom of Speech," 102 Yale L.J. 1293, 1298 (1993) ("constitutionally protected forms of communication include [inter alia] parades, dances, artistic expression, picketing, wearing arm bands ... [and] music"). See also *State v. Ball*, 226 Conn. 265, 272, 627 A.2d 892 (1993)-(citing J. Stevens, "The Freedom of Speech" and specifying rock music is protected form of communication).

⁵ In 2009, Alderwoman Clark (7th Ward) commended Bru Café for efforts in bringing a series of concerts to the plaza, stating “Your musical programs will make a lively entertaining scene in the 9th Square and encourage people to come to downtown New Haven to enjoy music and the surrounding businesses and restaurants. Entrepreneurial merchants like you deserve to have the support of all the Departments of the City Government for your interest and concern for the surrounding community”.