



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF THE NATION'S CAPITAL

1400 20TH STREET, N.W., SUITE 119 • WASHINGTON, DC 20036-5920
T: 202-457-0800 EXT. 114 F: 202-452-1868 E: FMULHAUSER@AOL.COM

STAFF ATTORNEY
FRITZ MULHAUSER

September 2, 2010

Sandy Meadows, Esq.
Counsel
Armed Forces Retirement Home
3700 North Capitol St., N.E.
Washington, DC 20011-8400

Re: Rights of AFRH residents to free expression

Dear Counsel:

We write to express the concern of the ACLU that, based on the facts we know, officials of the Home imposed an unlawful limitation on the rights of resident George Quick when last May they ordered him to stop leafleting on the grounds or face expulsion. Mr. Quick has received contradictory explanations from the Director of Resident Services, Charles Dickerson, of the basis for this order. One was in writing (see enclosed letter of May 7) charging that he handed out incorrect and derogatory information in violation of a Resident Guide provision calling for consideration of others. Another was verbal, when Dickerson told him it is unlawful in general to pass out handbills on government property. Both suggest significant misunderstanding of the law. We request that you review the facts we describe below and the law that we believe applies. Please let us know if we're wrong about any significant part. If you concur, that officials acted incorrectly and that no policy at the Home may be interpreted to prohibit free expression on the grounds of the Home as happened last May 6, we look forward to meeting with you and responsible Home officials to hear their views on what happened and how such a mistake can be prevented in future.

The facts of Mr. Quick's experience May 6, 2010

The Home is an independent federal agency, with one of its two facilities on a historic site on a tree-shaded hillside in Northeast Washington housing over 1,000 veterans. The grounds include the Lincoln Cottage, a National Landmark open to the public under an agreement between the Home and the National Trust for Historic Preservation. The Trust manages the Cottage and has invested millions to make the Cottage attractive and educational for tourists. Tickets are required for a tour but the facilities are generally open to the public without prearrangement. Tourists come and go throughout the day to reach the Cottage, Smith Visitor Education Center, picnic grounds and nearby parking area. Regulations for those visiting the site carry no warning that expressive activity is prohibited. On a recent day a visitor noticed tourists wearing clothing bearing messages of various kinds ("Washington Redskins," "Support Our Troops," etc.).

Mr. Quick is concerned about certain aspects of the financing of the Home, specifically that it is supported in part by mandatory payroll deduction by active duty enlisted men and women and Warrant Officers. He notes the financial stress on many young soldiers especially those with family obligations. He

also believes the burden on the vast enlisted force would be less if Home residents who can afford it shouldered more of the cost of their care. He has written letters and expressed these views in various ways. On May 6 he recalls he planned to give his views to tourists visiting the grounds, so he prepared copies of a one-page flyer (see enclosed copy) and walked from his residence with a chair to a patch of grass near the sidewalk and entrance to the Smith Educational Center where tourist visitors assemble for Cottage tours.

Mr. Quick sat in the chair until tourists walked past him. He then stood up, welcomed them to the Home, handed them a flyer, and talked to them about the Home's funding sources. He spoke in a calm and rational way, made clear the views were his own, and recalls many visitors seemed quite interested. The encounters were brief and voluntary; he detained no one who wanted to move on.

Mr. Quick leafleted this way to about fifteen tourists without incident. After approximately ninety minutes, a security guard approached Mr. Quick and asked him to step inside the security office. There Mr. Steven McManus, the Deputy Chief Operating Officer for the AFRH, threatened Mr. Quick with a hearing for expulsion from the home if he continued to leaflet. Mr. Quick asked for the warning and its justification in writing, which he received the next day from Mr. Dickerson. The letter, signed by Mr. Dickerson on behalf of David Watkins, the Director of the Washington AFRH, said Mr. Quick's leafleting violated paragraph 7.a. of the Resident Guide. That provides that residents should conduct themselves in a manner that promotes harmony, safety, security, and consideration of others. The letter says many of Mr. Quick's fellow residents complained about his leafleting; Mr. Quick found that confusing since he spoke that day only with visitors and saw no residents while he leafleted. Handing the letter to Mr. Quick, Dickerson added a second completely different explanation, that federal law prohibited leafleting on government property. He stressed the seriousness of the violation, that Quick would face expulsion if he continued to leaflet. In reasonable fear of losing his membership in the Home, which he highly values, he has not leafleted further.

The law that applies

The Home is government property and there is no special purpose (other than generally providing retirement lodgings for veterans) that constrains uses of the property, especially sidewalks from the entrance to key buildings and tourist facilities.¹ Home residents come and go freely on the sidewalks of the Home grounds; relatives and guests may stay in rooms there and also come and go; tourists come and go on the sidewalks from the gate and parking to the Cottage. As with sidewalks generally, it is natural that the walks of the Home, open to the residents and others, are places for speech and communication.

¹ The Home is established by statute as an independent federal agency, 23 U.S.C. § 411(a). Though it has statutory links with the military, for example the Chief Operating Officer and also the Director of the Washington Home are appointed by the Secretary of Defense, 24 U.S.C. § 415 and 417, they are civilian retirement care professionals and in general the Home is not subject to DOD regulations. The DOD Inspector General recently reported the Home has been advised by counsel "the grounds are not exclusively federal nor is the campus a federal enclave," and law enforcement there is by D.C. police. We have not seen the legal opinion the IG reported, but it does suggest the streets and sidewalks of the Home may be better analyzed simply as part of the District of Columbia. *Inspection of the Armed Forces Retirement Home*, Report No. IE-2010-002 (February 25, 2010), p. 34.

Sandy Meadows, Esq.

September 2, 2010

Page 3

Just as the Home would not exclude a visitor who wished to drive in, park and walk peacefully on the grounds and view the Cottage and nearby buildings while wearing a T-shirt saying "End Global Warming" or driving a car with a "Free the Whales" bumper sticker, the Home can't exclude other nondisruptive communication on its sidewalks absent a showing of a compelling interest to which any exclusion is narrowly tailored.

Neither justification given to Mr. Quick holds up. First, Mr. Dickerson is simply uninformed about current law; we know of no law or regulation that prohibits leafleting on government property. And the ACLU would immediately and successfully challenge such a law, as any reviewing court would find such a rule (applicable anywhere, any time) to be fatally overbroad. A moment's reflection on the history of the National Mall or Pennsylvania Avenue, for example, suggests his statement can't be correct. Leaflets by the millions are distributed there, on government property, every year, by individuals and groups.

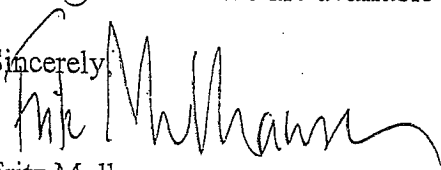
Second, the suggestion that the Home may control Mr. Quick's communication if his message distresses others is also incorrect. The Resident Guide request for considerate conduct is a helpful reminder about civility, but has no force of law establishing a code of acceptable speech or allowing for punishment if another resident (or more) disagree. Mr. Dickerson's letter and remarks to Mr. Quick make clear that Home officials don't like Mr. Quick's message—whether they think it's factually incorrect or just because other residents are weary of his often-repeated concerns. But the First Amendment's central proscription is against censorship, in the form of viewpoint discrimination. There can never be a compelling government interest in prohibiting a certain message. Content-based restrictions of speech, aimed to assuage disturbance to others' thoughts or feelings, are never a valid exercise of government power. Pure speech can, at an extreme, be limited if it's a true threat or incites others to immediate violence; but there is no suggestion Mr. Quick's speech was of a kind requiring immediate censorship to preserve health or safety at the Home.

Conclusion

Based on the facts and analysis above, we believe it was a constitutional error for Home officials to stop Mr. Quick from peacefully leafleting on May 6 on a Home sidewalk available to residents and the public, and regrettable that they accompanied that mistake with incorrect citations of law and a frightening threat of losing membership in AFRH.

After you have reviewed the incident described above, we look forward to meeting with you and Home officials in person to discuss the ways the AFRH can respect Mr. Quick's free speech rights. Feel free to contact me at (202) 457-0800 or by email at fmulhauser@aol.com. We are available at your convenience.

Sincerely,


Fritz Mulhauser
Staff Attorney

Enclosures (leaflet, 5/7/10 letter)

welcome to the AFRH-W

**DO WE SUPPORT OUR
TROOPS ?**

-NO WAY-

Our troops are required by law to support us. Every enlisted service member in every branch of the armed services has money withheld from their pay every month to subsidize the home. This is not a voluntary contribution, it's the law. Some of our troops require food stamps to feed their family, yet money is taken from their pay to subsidize cheap living for vets of their grandparents generation. The V.A. has a budget of over \$50.000.000,000, that's right, 50 BILLION, to aid these veterans. Yet they pass a bill to squeeze a few bucks a month from our troops pay. Why?. Every man legally admitted to the home is authorized a VA pension guaranteeing a income of over \$11,000 a year, yet some pay nothing, many others pay less than \$100 a month. The Chief Operating Officer of the Home has absolute power to correct this injustice. To date he has done nothing. Please ask your representiative why our troops are required to subidize Home members that are not ask to make much of a effort to support themselves

For more information contact;

**George Quick AFRH-942 3700 N. Capitol, Wash. DC
Telephone 202 291 6827 E-mail ibgeorgequick@verizon.net**

ENC. # 4

ARMED FORCES RETIREMENT HOME - WASHINGTON
Office of the Director

Date: 7 May 2010

SUBJECT: COMMUNITY STANDARDS AND CONSEQUENCES OF VIOLATION

Dear Mr. Quick,

It has been brought to our attention that you have taken actions that may be in violation of the Resident Guide regarding resident conduct. In accordance with ~~paragraph 7-a of the Guide~~, which you have signed and agreed to follow, residents are expected to conduct themselves in a manner that promotes harmony, safety, security and "consideration" of others. We believe you may be engaging in activities that violate these standards. Specifically, on 6 May 2010 you were observed passing out the attached flyers to Visitors and Residents on home property. Your flyer contained information about your fellow Residents that is not factual, misleading, and derogatory. Many of your fellow residents complained to management.

You are advised that you must follow the rules set forth in the Resident Guide and cease all further actions that disrupt the harmony and serenity of our community here at the Armed Forces Retirement Home. Your failure to do so could result in administrative action against you, such as a reprimand, a suspension of your facility privileges, a referral for counseling, or even dismissal from the AFRH-W community. Living in a community environment requires that all community members follow basic rules of civility concerning other residents and staff members. While we sincerely want you to continue as a resident at the AFRH-W, if you feel you cannot abide by our rules of residency, or if you desire to seek alternative housing, you are free to do so and we can assist you into transitioning to an environment that better suits your needs.

This letter serves as notice to you that behaviors such as those listed above will not be tolerated.

Any questions you have on this matter may be addressed with: The Undersigned

Sincerely,



For David Watkins

Director, AFRH-W

ACKNOWLEDGEMENT OF RECEIPT

I, Mr. George Quick George Quick, hereby acknowledge receipt of this Notice Letter, dated 7 May 10.

Enc. #5