CENTER FOR PROTEST LAW & LITIGATION
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February 3, 2021

Rich Courtemanche, Land Commissioner, Aitkin County, MN
Daniel Guida, Sheriff, Aitkin County, MN
Pam Nordstrom, Mayor City of Palisade, MN
Maureen Mishler, City Clerk, City of Palisade, MN

Via email: rich.courtemanche@co.aitkin.mn.us; dan.guida@co.aitkin.mn.us; mayor116@outlook.com; city@frontiernet.net

Dear Commissioner Courtemanche, Sheriff Guida, Mayor Nordstrom, Clerk Mishler:

We are writing on behalf of Winona LaDuke, Shanai Matteson, Gaylene Spolarich and Tania Aubid regarding plans to engage in First Amendment protected activities on public land in Berglund Park under the jurisdictions of the City of Palisade and Aitkin County, this coming Saturday, February 6, 2021. These activities include the provision of educational information to the public about just transitions for a sustainable future, the facts behind water protectors' opposition to Enbridge's Line 3 pipeline dangerously pumping fuel through the territory of the Indigenous Anishinaabe people, the devastating effects on the local environment and on global climate change by Enbridge's and other fossil fuel corporations' exploitative ventures as well as healing and religious activities.

Your offices have unlawfully attempted to deprive Ms. LaDuke, Ms. Matteson, Ms. Spolarich and Ms. Aubid and others of their lawful rights to assemble on public land and, by statements and the inclusion of the County Sheriff Daniel Guida in the chain of communications,

have conveyed a threat to arrest persons who may peaceably assemble as intended.

In a shocking and outrageous pattern of retaliation, harassment, bias and discrimination, Sheriff Guida and Aitkin County directly threatened arrest against Ms. Matteson, a resident of Palisade, in response to her efforts to obtain authorization to hold an educational and religious event in a public park, and then used their police and prosecutorial powers to punitively issue multiple count charges against Ms. LaDuke, Ms. Aubid and others seeking to imprison and fine them for peaceful activities on treaty lands. Ms. LaDuke is an Anishinaabekwe (Ojibwe) enrolled member of the Mississippi Band Anishinaabe. Ms. Aubid, a resident of Aitkin County, is a member of the Mille Lacs Band of Ojibwe. Ms. Spolarich, a resident of Palisade, is a member of Turtle Mountain Band as well as former City Clerk for Palisade.

These actions and threats are made all the more disturbing as Sheriff Guida sits on the Executive Committee of the Northern Lights Task Force and because the private Enbridge Corporation is funding public law enforcement through the Public Safety Escrow Trust, thus financially incentivizing County police to act against peaceful opponents of Enbridge's pipeline plans and bill the Escrow Trust for such actions. The unusual step by County and City authorities to engage the Sheriff in a simple request to assemble in a public park, and the ensuing threats and punitive prosecutions, make clear the extraordinary and improper conflict of interest present.

Basic First Amendment rights are being deprived at the whim and direction of entities and officials, armed with the power of the state, serving essentially as private security of a private corporation whose profit interests lie in suppressing and demonizing opposition to their activities – including suppressing educational events that can impact the public's understanding of their dangerous pipeline.

We are writing to request that these efforts to obstruct and deny access for First

Amendment protected activity cease and that your offices affirmatively state that they will not engage in harassment or arrest of event attendees or organizers engaging in lawful First Amendment activities on February 6, including on the purported basis that they lack a required permit to peaceably assemble. It should go without saying that your offices may not in any way retaliate against event attendees or organizers and that these outrageous charges, issued to chill, deter and punish peaceful assembly activity must be dropped.

There is no lawful basis for you to "deny" access to the areas of Berglund Park that the organizers have stated they intend to use for planned peaceful free speech and religious activities. To the extent that your offices have any process whatsoever for issuing written authorization for such use, please do so immediately.

In the absence of any constitutional and lawful permitting process for authorizing / denying access to these public spaces, Ms. Matteson, Ms. Spolarich, Ms. LaDuke and Ms. Aubid reasonably understand that this event may proceed.

Neither Aitkin County nor the City of Palisade are employing a constitutionally permissible permitting or reservation system, to the extent that they have any system with objective standards for issuance/denial of permits at all. Decisions are made, if they are made at all, on an *ad hoc*, discretionary basis by officials who have been given unbridled discretion to determine what, if any, First Amendment speech and activity may be allowed, or may be prohibited on public land.

The constitutional value of preserving access to these public fora for peaceable assembly is a cornerstone of the U.S. Constitution and a bedrock principle of democracy.

> 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.

Hague v. C.I.O., 307 U.S. 496, (1939).

The processes for access to public fora in the City of Palisade and in Aitkin County employ highly discretionary decision-making that abridge constitutional rights in the hands of officials who, lacking necessary guidance, are left to make decisions based on whim, caprice or -- should they be so inclined - - political bias and prejudice. The unconstitutionality of such an arbitrary and standardless approach to denying access to public fora has long been established. *See Forsyth County Ga. v. Nationalist Movement*, 505 U.S. 123, 177 (1992); *Shuttlesworth v. Birmingham*¸ 394 U.S. 147, 150-151 (1969) (permitting system must contain "narrow, objective and definite standards"); *Neimotko v. Maryland*, 340 U.S. 268, 271 (1951).

The processes in place in both these jurisdictions, or lack thereof, are squarely unconstitutional and unlawful, and violate fundamental principles recognized for more than seventy years by the Supreme Court of the United States. What you are seeking to do here is a throwback to eras past, and is clearly prohibited by law and Supreme Court jurisprudence.

> This Court [has] condemned statutes and ordinances which required permits be obtained from local officials as a prerequisite to the use of public places, on the grounds that a license requirement constituted a prior restraint on freedom of speech, press and religion, and, in the absence of narrowly drawn, reasonable and definite standards for the officials to follow, must be invalid. In the instant case we are met with no ordinance or statute regulating or prohibiting the use of the park; all that is here is an amorphous 'practice,' whereby all authority to grant permits for the use of the park is in the Park Commissioner and the City Council. No standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power; no substantial interest of the community to be served. It is clear that all that has been said about the invalidity of such limitless discretion must be equally applicable here. This case points up with utmost clarity the wisdom of this doctrine. For the very possibility of abuse, which those earlier decisions feared, has occurred here. Indeed, rarely has any case been before this Court which shows so clearly an unwarranted discrimination in a refusal to issue such a license.

Niemotko v. State of Md., 340 U.S. 268, 271–72, (1951) (citation omitted)

Taking it a step further, your offices are intentionally creating a chilling threat of arrest or prosecution for lawful assembly in a public park. We request that you issue a statement withdrawing these threats and convey clearly that there will be no obstruction of Ms. Matteson, Ms. Spolarich, Ms. LaDuke and Ms. Aubids' rights to peaceably assemble and no punitive and retaliatory actions taken against them for doing so.

Ms. Matteson has diligently sought to obtain a reservation or permit for these activities by communicating to multiple persons and offices in your jurisdictions but has been met with unconstitutional and unlawful obstruction and denial.

As you have been previously notified, activities are to take place on February 6th from noon until 5:00 p.m. in Berglund Park in Palisade, including the open air pavilion (which we understand is under the authority of the City of Palisade) and adjacent park area (which we understand is under the authority of Aitkin County). The event is open to the community and it is expected that approximately 50-75 people will come through the course of the afternoon at different times. These plans for peaceful, lawful free speech and religious activities will be in accord with health measures in light of Covid-19 as required by the Governor's recent recommendations on public gatherings, which allows gatherings under 250 people with social distancing and masks encouraged.

Ms. Matteson reached out to the Palisade City Clerk, Maureen Mishler on January 18 by phone seeking to reserve space in the outdoor pavilion. She was told that she had to provide a proposal to the Mayor and the City Council and obtain their approval. It was unclear whether she was to obtain the approval of one or both. By followup email she described the planned activities of February 6th as directed.

Not receiving a timely response, Ms. Matteson tried to contact the Mayor herself,

unsuccessfully, and followed up by email dated January 22 to Ms. Misher. Ms. Misher stated that she was "awaiting others to get back to me." It is unclear who the "others" are or what their role is in approving or denying requests to access public space, but as above, it is not permissible to employ such an *ad hoc* system.

Ms. Mishler by email thereafter stated that in regard to the request to use the Pavillion, that it "is not used in the winter," and that the rest of the Park is the property of Aitkin County. Ms. Mishler stated that "without Council approval you do not have permission to use the indoor or outdoor pavilion."

Ms. Matteson asked by followup email, whether "it is usual to need to take a pavilion use permit before the Mayor / Council?" She also stated that upon contacting Aitkin County she was advised that no permit was required for the adjacent parkland, and as such she would plan to go forward with the gathering plans without the use of the Pavillion if necessary.

Ms. Misher replied to Ms. Matteson that the pavilion was "not available for use at this time," and that she should check back in the summer and after COVID restrictions were lifted.

Ms. Matteson replied on the morning of January 23rd, cc'ing the Mayor and the Aitkin County Commissioner, and requested the "documentation that the City has on file about this decision – i.e. what rules are you following in making this decision?" She stated that they would go forward using the park for the public gathering, as allowed by Aitkin County, and would follow the Governor's most recent COVID-19 recommendations for public gatherings, which allows gatherings under 250 people with social distancing and masks encouraged.

In the afternoon of January 23rd, the Sheriff Daniel Guida, who was brought into the discussion chain by City Clerk Misher, stated, "You [Ms. Matteson] have been directly involved in unlawful assemblies. The city of Palisade has every right to use that against you, but they did

not." When Ms. Matteson objected to this allegation, noting that she has never been cited or prosecuted for unlawful assembly," Sheriff Guida threatened Ms. Matteson with possible arrest, asserting that he believed she had engaged in unspecified unlawful assembly in the past which "might very well result in criminal charges. Because you didn't get arrested or a citation does not mean the act is not illegal. And not being dealt with immediately does not mean it will not happen."

Two days later she received an email from the Aitkin County Land Commissioner, Rich Courtemanche, stating that he was prohibiting the First Amendment protected gathering.

First, Commissioner Courtemanche intentionally miscited provisions of the Aitkin County Land Ordinance in ostensible support of his decision, identifying certain activities, including amplified sound as "not allowed." The text of the Ordinance actually states that certain activities, including amplified sound, are allowed upon written permission issued by the Natural Resources Advisory Committee or County Land Commissioner, who is Mr. Courtemanche.

Even considering that provision, intentionally omitted by Commissioner Courtemarche, the County ordinance would be unlawful since it vests unbridled discretion in the hands of Mr. Courtemanche to permit or deny amplified sound arbitrarily or discriminatorily, as he has now done. As the Supreme Court stated in 1948, "this ordinance is unconstitutional on its face, for it establishes a previous restraint on the right of free speech in violation of the First Amendment which is protected by the Fourteenth Amendment against State action. To use a loud-speaker or amplifier one has to get a permit from the Chief of Police. There are no standards prescribed for the exercise of his discretion." *Saia v. People of State of New York*, 334 U.S. 558 (1948).

Mr. Courtemanche then cited as his basis for authority to deny access to public space in entirety, the following patently unlawful provision in the Land Ordinance:

"Sub 7. Meeting, Speeches, Demonstrations, and Parades in Parks

It is unlawful for any person to:

1. Conduct public meetings, assemblies, parades or demonstrations within a park unless authorized in writing by the Natural Resources Advisory Committee or County Land Commissioner

At this time, with COVID, winter weather, law enforcement, and safety concerns I am unable to entertain the use of Berglund Park for any public meetings, assemblies, parades and demonstrations." Email from Courtemanche to Matteson, January 25, 2021, 9:06 a.m. (emphasis in original).

When Ms. Matteson requested that Mr. Courtemanche elaborate on the "safety concerns" he identified, he refused to do so. In response he directed her to another provision of the Ordinance that authorizes designated County employees to revoke issued permits, and stated, "It is clear that the City of Palisade, the Sherriff's Office, and the Land Department have valid concerns. In light of these concerns, at this time I would have no choice but to deny your request." Email from Coutemanche to Matteson, January 25, 2021, 10:39 a.m.

The ordinance cited by Commissioner Courtemarche is facially unconstitutional. The County has no standards "guiding the hand of the [] County administrator…The decision…is left to the whim of the administrator. There are no articulated standards either in the ordinance or in the county's established practice. The administrator is not required to rely on any objective factors. … The First Amendment prohibits the vesting of such unbridled discretion in a government official. *Forsyth County, Ga. v. Nationalist Movement,* 505 U.S. 123, 132–33 (1992).

As the Supreme Court made clear more than fifty years ago when the racist commissioners and police of the deep south sought to prevent and disrupt civil rights activists from engaging in protected First Amendment activity:

> There can be no doubt that the [] ordinance, as it was written,

> conferred upon the City Commission virtually unbridled and absolute power to prohibit any 'parade,' 'procession,' or 'demonstration' on the city's streets or public ways. For in deciding whether or not to withhold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience.'
>
> It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.' And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license.

Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147, 150–51, 89 S. Ct. 935, 938–39, 22 L. Ed. 2d 162 (1969)(citations omitted).

We look forward to your prompt response by the close of business tomorrow, with your confirmation that no law enforcement action will be taken against the peaceful free speech, educational and religious activities that are scheduled for Saturday February 6, 2021, in Berglund Park.

Sincerely,

/s/ Mara Verheyden-Hilliard
Mara Verheyden-Hilliard, Esq.

cc: Jordan Kushner, Esq.