



P.O. Box 77208, Atlanta, GA 30357
770.303.8111 | syoung@acluga.org

March 13, 2018

Governor Nathan Deal
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Chris Riley, Chief of Staff
Office of Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Steve Stancil
Georgia Building Authority
One Martin Luther King, Jr. Drive
Atlanta, GA 30334
steve.stancil@gba.ga.gov

Via E-mail (c/o Executive Counsel to the Governor)

Re: Ending the unconstitutional GBA policy allowing censorship of protests at Liberty Plaza

Dear Governor Deal, Mr. Riley, and Mr. Stancil,

The American Civil Liberties Union of Georgia writes on behalf of Elias Green, an 18-year old high school senior who is the student leading the non-partisan “March for Our Lives” student protest on Saturday, March 24, 2018, at Liberty Plaza, which protests the failure of prior generations to protect students like Elias from the nationwide school shooting epidemic. Elias, who was born after the events of Columbine High School, has been participating in school shooting drills since kindergarten, experiencing a kind of terror few adults can relate to, which has spurred him to helm this student-led protest.

Although we were heartened to see your office finally approve the request allowing him to lead his classmates in protest on March 24,¹ we now write on Elias’s behalf to respectfully urge an immediate end to the blatantly unconstitutional policy that required Elias to obtain your approval in the first place. No one should have to approach the Governor’s office, hat in hand, for permission to engage in basic First Amendment activity.

¹ In a tweet issued on 4:27pm on March 12, Governor Deal tweeted, “I’ve directed the Georgia Building Authority to work with my chief of staff @ChrisRiley to find a pathway to accommodate the March 24 request while maintaining the integrity of the permitting process.”

As you are well aware, the Georgia Building Authority has promulgated guidelines² that forbid anyone from organizing a protest at Liberty Plaza on weekends and evenings unless they have, at a minimum, obtained the blessing of one of eight government officials: Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, the State School Superintendent, the Commissioner of Insurance, the Commissioner of Agriculture, and the Commissioner of Labor. Ga. Const. Art. 5, § 4, Para. 1. In addition, only issues deemed by the government to be of “statewide significance” are allowed. Perhaps most shocking, the Governor alone has final unfettered discretion to determine whether these criteria are met.

It is well-established that forcing all speakers to get pre-approval of their message while vesting full discretion in the government to accept or reject any such message is unconstitutional. As the United States Supreme Court held 70 years ago, “When a city allows an official to ban [speech] in his uncontrolled discretion, it sanctions a device for suppression of free communication of ideas.” *Saia v. People of State of N.Y.*, 334 U.S. 558, 562 (1948). The First Amendment forbids you from giving government propaganda a monopoly on the marketplace of ideas in a public forum like Liberty Plaza. And First Amendment protections do not apply less forcefully simply because the public fora at issue are technically the property of a nearby government building. *See United States v. Grace*, 461 U.S. 171 (1983) (striking down restrictions on speech on sidewalks surrounding United States Supreme Court); *Lederman v. United States*, 291 F.3d 36 (D.C. Cir. 2002) (striking down similar restriction on speech on United States Capitol grounds).

The restriction on all protests outside Monday to Friday working hours is also unreasonable, and disconnected from the everyday reality of Georgia residents, many of whom work during that time and can only access that space to protest on weekends. This is especially true for students like Elias. Though this restriction has been defended in the media as necessary to avoid paying overtime to the Capitol Police, administrative convenience is not an adequate justification for infringing on First Amendment rights. As the Supreme Court explained over a half-century ago, “it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them.” *Watson v. City of Memphis*, 373 U.S. 526, 537 (1963); *see also Riley v. Nat’l Fed’n of Blind*, 487 U.S. 781, 795 (1988) (“the First Amendment does not permit the State to sacrifice speech for efficiency.”). It is also somewhat ironic to defer to obligation of Capitol Police officers to work during the regular work day while ignoring the fact that most people cannot protest during the regular work day because of identical obligations.

More disturbing than this unconstitutional policy is the apparent larger trend of restricting First Amendment rights when it comes to protest activity at the Capitol. Protesters of all viewpoints traditionally gathered on the large plaza grounds at the State Capitol Building until 2014—a right the ACLU of Georgia believes protesters still have—when the Governor’s office and legislators apparently tried to relegate protesters to Liberty Plaza, utterly out of sight and

² These Guidelines are found at https://gba.georgia.gov/sites/gba.georgia.gov/files/related_files/document/Capitol%20and%20Grounds%20Exhibit%20and%20Event%20Guidelines.pdf.

away from the elected officials that are supposed to listen to public grievances. Even as protesters are left with fewer options to direct their protest to state officials, the government seems to continuously slice away at those remaining options. Just this year, the ACLU of Georgia had to intervene just to ensure that protesters could simply protest on the public sidewalks around the Capitol Building.³

Elias is only getting started with activism here in Georgia. On his behalf, we respectfully ask that you end this unconstitutional policy requiring government preapproval to use Liberty Plaza on weekends and open the permitting process to weekend use, lest your office be exposed to continued constitutional liability. The ACLU of Georgia is happy to work with your office on measures that will protect the First Amendment rights of all Georgians, regardless of their point of view. Feel free to give us a call to discuss if easier.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean J. Young".

Sean J. Young
Legal Director
ACLU of Georgia

³ See <https://www.acluga.org/en/press-releases/aclu-georgia-warns-state-capitol-police-against-suppressing-protests-capitol>. Thanks to the cooperation of the Capitol Police, we were later able to negotiate an informal arrangement that allowed protesters to picket on the sidewalk surrounding the Capitol Building in a manner that allowed unobstructed pedestrian traffic.