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VIA EMAIL

Dear Commissioners, Mr. Hough, & Sheriff Hutchinson,

The American Civil Liberties Union of Minnesota (“ACLU-MN”) understands that Hennepin County has adopted restrictions on the “Use of Public Spaces” throughout Hennepin County, including the Hennepin County Government Center Plaza, also known as The Peoples Plaza. We are concerned that these restrictions do not comport with the First Amendment, and we respectfully request that you rescind those portions that run afoul of the Constitution. We also request pursuant to the Minnesota Government Data Practices Act that you provide us with documents that set forth the purpose of these restrictions and any established rules or regulations that you have relied upon to adopt them.

According to the Hennepin County website and placards that were posted around the Hennepin County Government Center, individuals gathered in public spaces in Hennepin County—and of particular concern here, the Plaza—will be prohibited from “affixing, draping, or holding posters, banners, or any visual props,” “projecting images, on or over structures,” “writing or drawing with chalk” on county property, producing “public art,” “generating noise,” or using “intimidating behavior or offensive posters or signs.” These

restrictions appear to be *ad hoc* rules that were not previously applied to the Plaza and that were adopted specifically in advance of the demonstrations the County anticipates in response to the criminal trial of former Minneapolis police officer Derek Chauvin which is set to begin March 8, 2021.

The First Amendment presumptively protects all forms of expression against governmental interference and restraint. The broadest protection of this right is aimed at political expression in order to “assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Roth v. United States*, 354 U.S. 476, 484 (1957). There is no dispute that the Hennepin County Government Center Plaza is a traditional public forum. *Occupy Minneapolis v. Cnty. of Hennepin*, 866 F. Supp. 2d 1062, 1069 (D. Minn. 2011). In a traditional public forum, “the government’s ability to permissibly restrict expressive conduct is *very* limited.” *United States v. Grace*, 461 U.S. 171, 177 (1983) (emphasis added).

The County’s prohibitions on “affixing, draping, or holding posters, banners, or any visual props,” “projecting images, on or over structures,” “writing or drawing with chalk” on county property, producing “public art,” and “generating noise” are likely unconstitutional, overly restrictive constraints on protected First Amendment activity. A government entity may enforce regulations on the time, place, and manner of expression, if such restrictions are content-neutral and if they are “narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). While content-neutral, the County’s posted prohibitions are neither narrowly tailored nor serving of a significant government interest. *See Edwards v. City of Coeur d’Alene*, 262 F.3d 856, 866 (9th Cir. 2001) (holding an ordinance’s ban on affixing signs or placards to any wooden, plastic or other type of support was an unconstitutional time, place, manner restriction because it was not narrowly tailored). Nor do they leave open ample alternative channels of communication. To the contrary, the placards indicate that Hennepin County intends to enforce these restrictions on speech in all public spaces that are County property. Furthermore, the County’s restrictions shut down alternative forms of expression—prohibiting posters, banners, visual props (such as flyers), projection images, chalking, public art,¹ or generating noise (like speaking, chanting, singing, etc.). *See Occupy Minneapolis*, 866 F. Supp. 2d at 1070 (finding that Hennepin County’s ban on any chalking on Plaza property was a proper time, place, manner restriction because “Plaintiffs have ample methods of communication available to them, including passing out flyers, carrying or wearing signs, and public speaking”).

Additionally, the County’s prohibition on “intimidating behavior” or “offensive posters or signs” is an unconstitutional content-based restriction. Content-based restrictions on speech

¹ The County’s prohibition on public art “unless it is placed exclusively through the Facility Services and Communications departments” is likely an unconstitutional content-based restriction. *See Occupy Minneapolis*, 866 F. Supp. 2d at 1070–71 (explaining that Hennepin County’s resolution that banned the hanging of signs or posters in the Plaza *except* those “placed by county personnel related to county business” was likely an unconstitutional content-based restriction).

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are presumptively unconstitutional, unless the government entity can prove that they are narrowly tailored to serve compelling state interests. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *see also Bowman v. White*, 444 F.3d 967, 975 (8th Cir. 2006). Rules such as the one that Hennepin County seeks to impose here cannot survive strict scrutiny for various reasons. First, they have the effect of a prior restraint on the exercise of First Amendment activity, and give unfettered discretion to officials to make arbitrary decisions about which viewpoints constitute “intimidating” or “offensive” speech. This is constitutionally impermissible. *Cf. Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 133 (1992) (“The First Amendment prohibits the vesting of [] unbridled discretion in a government official.”). Second, they are neither narrowly tailored nor serve a sufficiently compelling governmental interest to justify such a severe curtailment of protected First Amendment activity.

Because we believe that these restrictions run afoul of the First Amendment, we request that at the very least you immediately rescind those parts identified above. We ask that you resolve these issues before enforcing these rules against any individuals or groups wishing to exercise their right to free speech and assembly on Hennepin County property. Please also provide us with a response to this letter as soon as possible.

Sincerely,



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cc: Assistant County Attorney Kelly K. Pierce (kelly.pierce@hennepin.us)
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