

THE RUTHERFORD INSTITUTE

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May 20, 2011

Via Email (erin_broadbent@nps.gov) & U.S. Mail

Ms. Erin K. Broadbent, Superintendent
Kings Mountain National Military Park
2625 Park Road
Blacksburg, South Carolina 29702

Re: Restriction on Political Speech

Dear Ms. Broadbent:

The Rutherford Institute has been contacted by Jack Faw, a 73-year-old Charlottesville, Virginia, resident who was allegedly told by a ranger at Kings Mountain National Military Park that he would have to remove his car from the Park because of political messages attached to his vehicle. This directive by a government employee is not only inconsistent with National Park Service regulations but is also a clear violation of Mr. Faw's rights under the U.S. Constitution. In particular, it deprives Mr. Faw of his First Amendment right to the freedom of expression. Thus, we are seeking your assurance that employees at Kings Mountain National Military Park will be properly instructed in how to respect the constitutional rights of visitors to the Park and that Mr. Faw's rights will not be similarly infringed in the future.

Mr. Faw, a frequent visitor to Kings Mountain National Military Park whose ancestors fought in the historic battle memorialized at the Park, arrived at the Park in his personal passenger vehicle on May 6 and parked in the parking lot adjacent to the Visitors Center. Affixed to the back window of the vehicle was a translucent decal approximately three feet in length and one-half foot in width promoting "Ron Paul's Campaign for Liberty," an organization dedicated to reestablishing and furthering the principles embodied in the United States Constitution. After watching the movie at the center and just after starting the walking tour, Mr. Faw was approached by Law Enforcement Ranger Eugene Rife, who asked Mr. Faw to come into his office. Ranger Rife then stated that Mr. Faw would have to remove his car from the Park because it displayed a political decal that is not allowed in National Parks. Mr. Faw protested that he had a right to display the message and that it was not causing any disruption. Nevertheless, Ranger Rife insisted that Mr. Faw remove his vehicle from the Park, at which point Mr. Faw felt compelled to comply with the Ranger's order and left the Park.

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The display of a political message on a vehicle is unquestionably expression protected by the First Amendment's guarantee to freedom of speech. Just recently, a federal appeals court ruled that the rights of citizens to freedom of speech under the First Amendment apply within the confines of National Parks. *Boardley v. U.S. Dept. of the Interior*, 615 F.3d 508 (D.C. Cir. 2010). In particular, this court decision recognized that speech by individuals does not pose the kind of threat to the interest of parks in protecting their activities and operations and functions and in preserving the peace and tranquility of the park that would warrant restricting that speech. *Id.* at 519-20; *see also Cox v. City of Charleston*, 416 F.3d 281, 285-86 (4th Cir. 2005) (restriction on political speech was overly restrictive where it applied to speech of individuals that did not pose significant threat to public order). Mr. Faw's passive and silent expression is clearly the kind of speech that was not inimical to any legitimate interest of the Park and there was no justification for punishing that expression by forcing him to cut short his Park visit.

Indeed, Mr. Faw's political messages on his vehicle appear to be wholly consistent with and allowable under regulations promulgated last October by the National Park Service concerning expressive activities by the public within National Parks. Those regulations authorize the designation of areas as available for speech by members of the public where the speech would not impair the atmosphere or operations of the park or would not be incompatible with the nature and traditional use of the park. 36 C.F.R. § 2.51(c)(1). The parking lot where Mr. Faw's vehicle was located is certainly the kind of area contemplated by this regulation. Additionally, the regulations go so far as to allow individuals to have within these designated areas "[h]and-carried signs[.]" 36 C.F.R. §§ 2.51(b)(1)(iv) and 2.52 (b)(1)(iv). The decal on Mr. Faw's car was certainly no more disruptive than a hand-carried sign, and so is clearly a form of expression allowed by the National Park Service regulations.

It is our hope that you will do everything in your power to ensure that this incident is not repeated and that Mr. Faw, a frequent visitor to Kings Mountain National Military Park, is not restricted from exercising his constitutional right to free expression by Park employees. To this end, we ask that you provide assurances that in the future Mr. Faw will not be required to leave the Park because political messages are displayed on his vehicle and that Park employees will be properly instructed in how to respect the constitutional rights of visitors to the Park. We await your assurances, or the grounds upon which you justify the treatment of Mr. Faw as described above, on or before May 31, 2011.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John W. Whitehead

cc: Jonathan B. Jarvis, Director, National Parks Service