

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-13604

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D.C. Docket No. 0:15-cv-60185-WJZ

FORT LAUDERDALE FOOD NOT BOMBS,  
NATHAN PIM,  
JILLIAN PIM,  
HAYLEE BECKER,  
WILLIAM TOOLE,

Plaintiffs - Appellants,

versus

CITY OF FORT LAUDERDALE,

Defendant - Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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(August 31, 2021)

Before LAGOA, HULL, and MARCUS, Circuit Judges.

MARCUS, Circuit Judge:

This case presents the second appellate skirmish in Fort Lauderdale Food Not Bombs’s (“FLFNB”) challenge to Fort Lauderdale’s efforts to shut down the practice of sharing food with the homeless in downtown Stranahan Park. FLFNB hosts food-sharing events in order to communicate the group’s message that scarce social resources are unjustly skewed towards military projects and away from feeding the hungry. In Round One, a panel of this Court held FLFNB’s food sharing to be expressive conduct protected by the First Amendment and remanded the case to the district court to address whether the City’s regulations actually violated the First Amendment. Now, in Round Two, we must decide whether Fort Lauderdale Park Rule 2.2, which requires City permission for social service food-sharing events in all Fort Lauderdale parks, can withstand First Amendment scrutiny as applied to FLFNB’s demonstrations.

It cannot. The Park Rule commits the regulation of FLFNB’s protected expression to the standardless discretion of the City’s permitting officials. The Park Rule bans social service food sharing in Stranahan Park unless authorized pursuant to a written agreement with Fort Lauderdale (the “City”). That’s all the rule says. It provides no guidance and in no way explains when, how, or why the City will agree in writing. As applied to FLFNB’s protected expression, it violates the First Amendment. It is neither narrowly drawn to further a substantial government interest that is unrelated to the suppression of free expression, nor, as

applied, does it amount to a reasonable time, place, and manner regulation on expression in a public forum. Accordingly, we reverse the district court's order granting summary judgment in favor of the City and remand for further proceedings consistent with this opinion.

I.

A.

Fort Lauderdale Food Not Bombs is a nonprofit unincorporated association affiliated with the international advocacy organization Food Not Bombs. FLFNB advocates the message “that food is a human right, not a privilege, which society has a responsibility to provide for all.” Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale, 901 F.3d 1235, 1238 (11th Cir. 2018) (“FLFNB I”).

At the center of FLFNB's efforts are its weekly food sharing events in Fort Lauderdale's downtown Stranahan Park. Stranahan Park “is known in the community as a location where the homeless tend to congregate and, according to FLFNB, ‘has traditionally been a battleground over the City's attempts to reduce the visibility of homelessness.’” Id. “At these events, FLFNB distributes vegetarian or vegan food, free of charge, to anyone who chooses to participate. FLFNB does not serve food as a charity, but rather to communicate its message ‘that [ ] society can end hunger and poverty if we redirect our collective resources from the military and war . . . .’ Providing food in a visible public space, and

partaking in meals that are shared with others, is an act of political solidarity meant to convey the organization's message." Id.

"FLFNB sets up a table underneath a gazebo in the park, distributes food, and its members . . . eat together with all of the participants, many of whom are homeless individuals residing in the downtown Fort Lauderdale area. FLFNB's set-up includes a banner with the name 'Food Not Bombs' and the organization's logo -- a fist holding a carrot -- and individuals associated with the organization pass out literature during the event." Id. This includes flyers to convey FLFNB's social-justice message that all who are hungry deserve food.

B.

Sometime before 2000, the City of Fort Lauderdale promulgated Park Rule 2.2:

Parks shall be used for recreation and relaxation, ornament, light and air for the general public. Parks shall not be used for business or social service purposes unless authorized pursuant to a written agreement with City. As used herein, social services shall include, but not be limited to, the provision of food, clothing, shelter or medical care to persons in order to meet their physical needs.

Some years ago, Arnold Abbott, who led a program to feed the homeless on a public Fort Lauderdale beach, obtained a state-court injunction against the Park Rule on the ground that it violated Florida's Religious Freedom Restoration Act, Fla. Stat. § 761.03. (Abbott is not affiliated with FLFNB.) The injunction required the City to either stop enforcing the Park Rule, designate an area in which Abbott

could lawfully distribute food, or specify objective criteria for permitted food-sharing locations. See Abbott v. City of Fort Lauderdale, 783 So. 2d 1213, 1215 (Fla. Dist. Ct. App. 2001).

The City stopped enforcing the Park Rule until October 22, 2014, when it enacted Ordinance C-14-42 to amend the Fort Lauderdale Uniform Land Development Regulations (“ULDR”). The City enacted this ordinance at least in part as an effort to bring itself into compliance with the state-court injunction so that it could resume enforcement of the Park Rule. In the years leading up to the enactment of Ordinance C-14-42, some citizens had complained about a series of problems they believed to be associated with feeding the homeless in public spaces, including safety risks, a lack of proper water and restroom facilities, and the negative impact this conduct may have on surrounding communities. In January 2014, the City Commission held a workshop on the “the homeless population in the City of Fort Lauderdale,” where stakeholders debated public food distribution and related issues.

Ordinance C-14-42, as relevant here, (1) defines an Outdoor Food Distribution Center as “[a]ny location or site temporarily used to furnish meals to members of the public without cost or at a very low cost as a social service”; (2) defines “social service[.]” as “[a]ny service provided to the public to address public welfare and health such as, but not limited to, the provision of food; hygiene care;

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