No. 19-3290, 19-3310

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CORRY SESSLER, an individual
Plaintiff-Appellant/Cross-Appellee,

vs.

CITY OF DAVENPORT, IOWA; GREG BEHNING, in his individual capacity acting as a police officer for the CITY OF DAVENPORT, IOWA; JASON SMITH, in his individual capacity acting as a police officer for the CITY OF DAVENPORT, IOWA; and J.A. ALCALA, in his individual capacity acting as a police officer for the CITY OF DAVENPORT, IOWA,
Defendants-Appellees/Cross-Appellants.

On appeal from the United States District Court
For the Southern District of Iowa
Order of U.S. District Judge Rebecca Goodgame Ebinger
Case No. 3:19-cv-00011-RGE-HCA

DEFENDANTS-APPELLEES/CROSS APPELLANTS' REPLY BRIEF

Jason J. O'Rourke
Alexander C. Barnett
LANE & WATERMAN LLP
220 North Main Street, Suite 600
Davenport, IA 52801
Telephone: (563) 324-3246
Facsimile: (563) 324-1616
Email: jorourke@l-wlaw.com
Email: abarnett@l-wlaw.com
ATTORNEYS FOR DEFENDANTS APPELLEES/CROSS-APPELLANTS

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SUMMARY OF THE ARGUMENT

Sessler's argument that Street Fest is a traditional public forum begins and ends with the mistaken premise that the City cannot temporarily create a limited public forum by reserving a portion of its property to raise revenue or conduct a temporary event to benefit the general public. The First Amendment does not command such a limited view of the City's authority to control its public property. The sidewalks and streets comprising Street Fest, during the two days per year the festival is ongoing, are altered to the extent that there is no meaningful distinction between Davenport's Street Fest and the fairs in *Powell v. Noble*, 798 F.3d 690,

700 (8th Cir. 2015) and *Heffron v. Int'l Society for Krishna Consciousness*, 452 U.S. 640, 651 (1981).

Sessler's argument that the City's actions were motivated by the content of his speech completely disregards the record and flips the burden of proof. The District Court correctly determined Sessler and his group "disturbed vendors and performers and interfered with the experience of festival-goers walking near him." (Aplt. App. 114, District Court Ruling, p. 15). There is no evidence the City ignored comparable threats of disruption to Street Fest. Sessler and his colleagues were the only attendees who stood near a main entrance to Street Fest in the close proximity of vendors expressing themselves for approximately thirty minutes with amplification equipment that could be heard "across a busy three-lane street." (Sessler Response and Reply Brief, p. 10; City App. 74, Sessler Dep. 118:7 – 119:3).

ARGUMENT

I. The District Court Erred in Holding the Sidewalks and Streets Comprising the City of Davenport's Street Fest Were a Traditional Public Forum.

This case is not about Sessler's ability to exercise First Amendment activities on the City's public streets and sidewalks. The City removed Sessler and his colleagues from the gated area of Street Fest, but allowed Sessler and his group

to stand on a busy corner just across the street from Street Fest, where they expressed their message via amplification for approximately three hours. (Aplt. App. 49, ¶39; City App. 74, Sessler Dep. 118:7-118:18). The City's actions confirm that Sessler is allowed to express his religious views on public sidewalks and other public forums in the City of Davenport.

In view of the City's conduct, Sessler does not seek general access to the City's public streets and sidewalks. Instead, he seeks specific access to Street Fest, a special annual event of very limited duration that attracts tens of thousands of attendees in a footprint of three city blocks. Sessler completely disregards the physical characteristics and function of Street Fest, and contends his conduct was justified because Street Fest happens to take place on the City's streets and sidewalks. Sessler greatly oversimplifies the forum analysis and overlooks "the special characteristics regarding the environment in which those areas exist." *Powell v. Noble*, 798 F.3d 690, 700 (8th Cir. 2015) (quoting *Bowman v. White*, 444 F.3d 967, 974 (8th Cir. 2006)); *United States v. Kokinda*, 497 U.S. 720, 727-28 (1990) (plurality opinion) ("[T]he location and purpose of a publicly owned sidewalk is critical to determining whether such a sidewalk constitutes a public forum.").

The fact that Sessler and his colleagues' expressive activities occurred on a street or sidewalk within the fenced area of Street Fest does not define the

festival's forum. "[F]orum analysis is not completed merely by identifying the government property at issue." *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985); *Kokinda*, 497 U.S. at 727 ("The mere physical characteristics of the property cannot dictate forum analysis"). "Rather, in defining the forum [Courts] have focused on the access sought by the speaker." *Cornelius*, 473 U.S. at 800 (1985). "In cases in which limited access is sought" within the larger boundaries of a piece of governmental property, the Supreme Court has "taken a more tailored approach to ascertaining the perimeters of a forum within the confines of the government property." *Id.* (defining relevant forum as access to a federal charity drive rather than general access to the federal workplace); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46-47 (1983) (classifying a school's internal mail system as the relevant forum where plaintiff wanted to distribute mail to the school's teachers); *City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 814-815 (1984) (rejecting argument that street light poles are a public forum because they are situated on streets).

Here, the relevant forum is Street Fest, including its physical characteristics, limited duration, and the fact that it exists in part to provide a means for a great number of vendors to temporarily present their food, beverages, and products to a large number of people in an orderly, safe and efficient fashion. Sessler assumes

that Street Fest is a traditional public forum based on generic holdings that public streets and sidewalks are traditionally considered public fora. He fails to recognize, however, that the status of any street or sidewalk depends upon its location and, in particular, any special characteristics that differentiate the area from regular public streets and sidewalks. *Bowman*, 444 F.3d at 978.

With respect to the physical characteristics of Street Fest, this Court has held "congestion, signage, police presence, and fencing" are "special characteristics" that differentiate streets and sidewalks from those that are generally considered traditional public fora. *Powell v. Noble*, 798 F.3d 690, 700 (8th Cir. 2015). Similarly, the Supreme Court has observed:

> The Minnesota State Fair, as described above, is a temporary event attracting great numbers of visitors who come to the event for a short period to see and experience the host of exhibits and attractions at the Fair. The flow of the crowd and demands of safety are more pressing in the context of the Fair. As such, any comparison to public streets are necessarily inexact.

Heffron v. Int'l Society for Krishna Consciousness, 452 U.S. 640, 651 (1981).

Sessler does not attempt to distinguish the characteristics and function of Street Fest from the Fairs in *Powell* and *Heffron*. Nor could he. The streets and sidewalks comprising Street Fest differ significantly from the surrounding public streets and sidewalks. Moreover, Street Fest is generally encompassed by six-foot-high chain-link fence, which sets the festival area off from the surrounding areas and provides a visible indication between the streets and sidewalks comprising

Street Fest and those in the surrounding areas. The logic of *Powell* and *Heffron* apply with equal force to the streets and sidewalks within the gated area of Street Fest. "The flow of the crowd and demands of safety are more pressing in the context of [Street Fest]." *Heffron*, 452 U.S. at 651. Sessler cannot, and does not, argue otherwise.

Instead, Sessler hitches his wagon to the District Court's reasoning that the City cannot create a limited public forum by temporarily reserving a portion of what is a traditional public forum to raise revenue or conduct events of limited scope in which the general public has an interest. The fact that property constitutes a traditional public forum, however, does not preclude the City from periodically designating such property for a specific use incompatible with public forum status.

The Southern District of New York's analysis in *People for the Ethical Treatment of Animals v. Giuliani*, 105 F. Supp. 2d 294 (S.D.N.Y. 2000), *aff'd* 18 Fed. Appx. 35 (2nd Cir. 2001) is on point. There, PETA submitted two designs of painted fiberglass cows to participate in "CowParade New York City 2000," a public art event that the city and various private entities jointly conducted. *Id.* at 298. The decorative cows were to be displayed on both public and private property for a limited duration and the city expected financial benefits from increased tourism revenue and by virtue of an agreement that the city would earn revenue from the sale of CowParade merchandise. *Id.* at 299. A design selection

committee comprised of both the government and private individuals reviewed and selected the proposed designs that would be displayed throughout the city. The design selection committee rejected one of PETA's designs. *Id.*

Thereafter, PETA sought a preliminary injunction arguing a local government "has no authority to transform traditional public property, like parks or sidewalks, for purposes of limited expressive activities…without allowing unrestricted access to every organization that wishes to participate." *Id.* at 311. The *Giuliani* court recognized the case hinged on "the scope of the government's authority to infringe upon freedom of expression as a direct or incidental effect of managing its affairs involving the use of public properties for their intended purposes." *Id.* at 304. The issue before the *Giuliani* court was not the opening of otherwise nonpublic government property for particular expressive purposes, but the scope of the government's authority to temporarily reserve a portion of traditional public property for some other purpose. *Id.* at 311.

The *Giuliani* court observed there are competing interests between First Amendment protections bestowed upon traditional public fora and the government's authority to exercise dominion and control over public spaces. *Id.* at 312. After a lengthy discussion of Supreme Court jurisprudence, the *Giuliani* court found that where these competing interests collide the Supreme Court strives to strike a balance that "promote[s] broad public access for expressive purposes,

while at the same time allowing government discretion to achieve the purposes for which public properties are intended in light of the various conflicting interests that often simultaneously compete for their use." *Id.* at 312-13.

The government's interest in exercising control over its property must be balanced in these circumstances because "[n]othing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities." *Cornelius*, 473 U.S. at 799. "[I]t is clear that 'the First Amendment does not guarantee access to government property simply because it is owned or controlled by the government.'" *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814 (1984) (quoting *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 129 (1981)). Similarly, "the mere fact that government property can be used as a vehicle for communication does not mean that the Constitution requires such uses to be permitted." *Taxpayers for Vincent*, 466 U.S. 789 at 814 & n.31. "At some point, the government's relationship to things under its dominion and control is virtually identical to a private owner's property interest in the same kinds of things, and in such circumstances, the State 'no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.'" *Id.* at 814 n.31 (quoting *Adderley v.*

Florida, 385 U.S. 39, 47 (1966)); *Rakas v. Illinois*, 439 U.S. 128, 143-44 n. 12 (1978) ("one of the main rights attaching to property is the right to exclude others"); *accord Greer v. Spock*, 424 U.S. 828, 836 (1976) (holding that streets and sidewalks open to the general public on a military base are not a public forum).

Analyzing these and similar authorities, the *Giuliani* court held "a natural concomitant of a state's proprietary role in managing internal operations is the ability to use public property not only for expressive purposes, *but to achieve other legitimate purposes such as those at issue here: to raise revenue, provide entertainment and promote tourism."* *Id.* at 315 (emphasis added). The *Giuliani* court observed further that other purposes by which a local government can manage its public resources include: "artistic expression with commercialism, boosterism, civic pride and public celebration." *Id.* at 332 (citing *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 71 (1976) ("The City's interest in attempting to preserve [or improve] the quality of urban life is one that must be accorded high respect.") and *Berman v. Parker*, 348 U.S. 26, 32-33 (1954) ("The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary.")).

With these principles in mind, the *Giuliani* court recognized the city did not alter public spaces for the singular purpose of accommodating limited expressive activities, but to serve "other legitimate governmental objectives as well." *Id.* at

317. To achieve these objectives, the city was entitled to prevent PETA from having "an unlimited right of access to the property as altered by the City's addition of the CowParade exhibit sculpture that was not there before." *Id.* at 318. In this context, PETA was not seeking access to "just a portion of sidewalk, plaza or park, but a portion of such space now occupied by the exhibit's decorated cow sculptures." *Id.* at 317. In rejecting PETA's theory that "the status of traditional public forum property is immutable[,]" the *Giuliani* court held "[t]he First Amendment does not command such a constraining view of the government's authority to exercise dominion over public property when needed to serve other legitimate purposes." *Id.* at 311, 315. The city was entitled to temporarily alter the nature of traditional public spaces to display the decorative cows through its inherent right of ownership, and such spaces did not constitute traditional public fora. *Id.* at 314-15, 318. Accordingly, the proper framework to analyze PETA's free speech rights was whether the city's design requirements were reasonable and viewpoint neutral. *Id.* at 319.

Public policy informed this conclusion. For instance, there is an increasing use of public-private partnerships to fund public events the government would otherwise be hesitant to finance through taxing the citizens at large.[1] *Id.* at 328.

[1] There is not a traditional public-private partnership between the City and the private-sponsor of Street Fest, DDP. There is no agreement between the City and DDP, contractual or otherwise, giving the City a right to control Street Fest's

These partnerships allow the government to conduct public events that otherwise would not exist for the benefit of the general public. *Id.* In the context of such relationships, "the private entities' interest in the commercial success of the venture…takes heightened importance and must be considered along with the interests of the government and weighed against the interests of the persons whose access to public expression may be somewhat curtailed by the limitations imposed in connection with the partnership's enterprise." *Id.* at 328-29. To this extent, "[r]easonable limitations" are "critical to ensure that unrestricted access does not unduly interfere with the achievement of the partnership's goals or jeopardize the event altogether." *Id.* at 329. To hold otherwise would jeopardize the existence of such events and abridge the rights of the many in the name of the few. *Id.* at 315-16.

Here, the City allows the Downtown Davenport Partnership ("DDP"), a division of the Quad Cities Chamber of Commerce, to produce and host Street Fest. (City App. 62-63, Gilliland Affidavit, ¶12-13). DDP produces Street Fest to showcase downtown Davenport and to encourage festivalgoers to return to the

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operations. In addition, the City has no right to share in DDP's profits and has no duty to share in DDP's losses from Street Fest. However, the relationship between the City and DDP is similar to the partnership in *Giuliani*. Street Fest generates revenue for DDP, which DDP reinvests into the local community and uses to help fund downtown revitalization. (City App. 63, Gilliland Affidavit, ¶16). DDP also invests capital and labor to host Street Fest. (City App. 61-62, Gilliliand Affidavit, ¶¶3-4).

downtown area to explore local businesses. (City App. 61, 63, Gilliland Affidavit, ¶¶2, 16). Street Fest also generates revenue for DDP, which DDP reinvests into the local community and uses to help fund downtown revitalization. (City App. 63, Gilliland Affidavit, ¶16). To generate revenue, the DDP issues vendor licenses to fee-paying, approved vendors. (City App. 63, Gilliland Affidavit, ¶17).

DDP has a reasonable expectation of generating revenue through Street Fest. (*See* City App. 63-64, Gilliland Affidavit, ¶16, 23). Street Fest has been an annual two-day festival in downtown Davenport for over forty years, and draws approximately 20,000 attendees each year. (City App. 62, Gilliland Affidavit, ¶5). The festival is often referred to as the "Quad Cities' Homecoming" as many people plan family and class reunions around Street Fest. (City App. 62, Gilliland Affidavit, ¶10). The City, for its part, gains financially not only from the revenues attracted by enhanced tourism and related private spending, but the funds DDP dedicates to improve the downtown area. To this end, "the City and the [DDP], and by extension the larger general public which also stands to benefit economically and otherwise from the event, all share an interest in maximizing the success of [Street Fest]." *Giuliani*, 105 F. Supp. 2d at 329. Similarly, the private vendors that participate in Street Fest and help attract attendees, which are the source of revenue for DDP and the City, are "critical members" of the festival "whose particular interests must be given special weight" when considering

whether an expressive activity is compatible with the unique characteristics of the festival. *Id.*

Against this weight of interests, Sessler and his colleagues are not entitled to disrupt Street Fest as they see fit. Street Fest is a publicly-sponsored festival that raises revenue, provides entertainment and promotes tourism. *See Giuliani*, 105 F. Supp. 2d at 315. As an annual festival for over forty years, Street Fest also promotes "civic pride and public celebration." *Id.* at 332. These are legitimate purposes by which the City, through its inherent right of ownership, can temporarily reserve a portion of its streets and sidewalks for a specific use incompatible with their traditional public function to serve legitimate purposes.

Sessler attempts to sidestep these competing interests and authorities by arguing the City cannot temporarily transform public streets and sidewalks into a limited public forum because Street Fest does "not have a particular expressive message to interfere with." (Sessler Response and Reply Brief, p. 51). This argument is woefully misplaced. The *Giuliani* court expressly recognized that a local government, in its proprietary role and exercising public functions, may use public property not only for expressive purposes, but to achieve other purposes such as providing entertainment and raising revenue. *Giuliani*, 105 F.Supp.2d at 315. The *Giuliani* court further held that when the government limits expression to

achieve these legitimate goals, it is subject only to the reasonableness test, not strict scrutiny. *Id.* at 315, 319.

More importantly, Street Fest does not promote a specific message or viewpoint for good reason. The City does not close its public streets or sidewalks to favor some viewpoints or ideas at the expense of others. Instead, the City closes a portion of its streets and sidewalks for the legitimate purposes identified above. Therefore, like the fairs in *Powell* and *Heffron*, Street Fest has "no discernible message." (Sessler Response and Reply Brief, p. 53). In fact, there is no meaningful distinction between Street Fest and the fairs in *Powell* and *Heffron*. Street Fest attracts approximately 20,000 people over the two-day festival to enjoy vendors that set up to sell food, beverages and other products. (City App. 62-63, Gilliland Affidavit, ¶5, 13). These funds are then reinvested into the City itself. Given the congestion, signage, police presence, fencing and demands for safety, the streets and sidewalks comprising Street Fest constitute a limited public forum, during the two days per year the festival is ongoing.

Powell reinforces this conclusion. The general public is granted free access to the streets and sidewalks within the Iowa State Fairgrounds when the State Fair is not in session. *Powell*, 36 F.Supp.3d at 825 ("During the off-season, [the public] can proceed down Grand Avenue through the Fairgrounds, but during the Fair, Grand Avenue is blocked just east of East 30th Street with a gate commonly

referred to as Gate 11."). While Grand Avenue and its accompanying sidewalks are generally accessible to the public during the off-season, they are congested and significantly different than ordinary public streets and sidewalks when the Fair is ongoing. This Court, recognizing the physical characteristics of the Fairground change when the State Fair is ongoing, held the portion of Grandview and its nearby sidewalks beyond the paid-admission portion of the Fair are a limited public forum "*at least during the eleven days per year the Fair is ongoing*." *Id.* at 833 (emphasis added); *Powell*, 798 F.3d at 700 (affirming the property in question is a limited public forum "at least during the 11 days each year when the Iowa State Fair is underway."). By limiting the forum analysis in *Powell* to the eleven days per year the State Fair is held, this Court astutely observed that a time-limited special event can present special circumstances and safety concerns that temporarily alter the nature of the forum occupied by the event. *Bowman*, 444 F.3d at 978 (determining forum type requires consideration of "any special characteristics regarding the environment in which those areas exist.").

The authorities cited in Sessler's Response and Reply Brief do not alter this conclusion. First, *Nat'l Federation of the Blind of Mo. v. Cross*, 184 F.3d 973 (8th Cir. 1999) and *Bowman v. White*, 444 F.3d 967, 978 (8th Cir. 2006) have no bearing on whether the City can temporarily restrict access to property that would generally be considered a traditional public forum. The issue in those cases was

whether the government had created a limited public forum by opening a non-traditional forum for limited public discourse. Here, this Court is presented with the materially different question of whether the City can create a limited public forum by temporarily reserving a portion of what is a traditional public forum to raise revenue or promote events in which the general public has an interest.

Sessler's reliance on *Johnson v. Minneapolis Park & Recreation Bd.*, 729 F.3d 1094 (8th Cir. 2013) is also misplaced. For starters, the parties in *Johnson* agreed Loring Park remains a traditional public forum during the two-day Twin Cities Pride Festival. *Id.* at 1099. The parties agreed on this point for good reason. The Twin Cities Pride Festival occupied a portion of a 42-acre public park. *Id.* at 1098 (observing a map of the festival delineated select portions of Loring Park dedicated to the festival). The general public had to refer to a map to identify portions of the park dedicated to Pride Festival because there was no visible indication that set the festival area off from the surrounding park, such as fencing. *Id.* The plaintiff in *Johnson* simply sought to leave literature in an unattended "material drop area" designated as a free speech area within the 42-acre park, as opposed to disrupting the entire festival. *Id.* at 1098. The Minneapolis Park and Recreation Board granted Twin Cities Pride a permit to occupy Loring Park to promote a particular message, as opposed to raising revenue for the city, providing entertainment or promoting tourism. *Id.* at 1096. Unlike the plaintiff in *Johnson*,

Sessler and his colleagues sought to disrupt an event for the public at large as opposed to occupying a traditional public forum to protest a permit-holder's message.

Altogether, this case is about Sessler's access to Street Fest, a permit-authorized, time-limited and crowded event that happens to take place on the City's property. Street Fest shares the physical characteristics of the fairgrounds at issue in *Powell* and *Heffron*. The City may, and did, alter its property to serve legitimate purposes such as raising revenue or to provide the general public with entertainment. The streets and sidewalks comprising Street Fest are a limited public forum during the two days per year the festival is ongoing.

II. The City Placed Reasonable and Viewpoint-Neutral Restrictions on Sessler's Conduct.

Sessler concedes that limiting congestion and disruption are "content-neutral reasons" to limit expressive activities in the context of a time-limited permitted event. (Sessler Response and Reply Brief, p. 24). In doing so, he stakes his entire motion for a preliminary injunction on the theory that "such reasons have no basis in the evidence of this case." (*Id.* at pp. 24, 32, 37).

As the District Court observed, Sessler is "objectively" wrong. (Aplt. App. 114, District Court Ruling, p. 15). The video footage Sessler and his colleagues were eager to capture on July 28, 2018 demonstrates they "disturbed vendors and

performers and interfered with the experience of festival-goers walking near him." (*Id.*). As the District Court correctly recognized, the footage "depict[s] individuals reacting negatively to Sessler interfering with their participation in Street Fest. To the extent the festival-goers and vendors also took offense to Sessler's message, there is no evidence the defendant officers factored the content of Sessler's speech into their decision to remove him." (*Id.*). Indeed, Officer Behning specifically told Sessler that the decision to remove him and his colleagues had nothing to do with the content of their message. (Aplt. App. 98, Video 5, Time: 5:30-5:52).

In a desperate attempt to distract this Court from the true legal analysis, Sessler repeatedly asserts there is nothing in the record to support the conclusion that the Defendant Officers would have taken the same action against other festival attendees if they happened to engage in the same conduct as Sessler and his group. (Sessler Response and Reply Brief, pp. 17, 31). Sessler—with his faux anger on this point—completely disregards the fact that he concedes no other individuals or entities engaged in conduct like himself and his colleagues. (City App. 74, Sessler Dep. 117:20-118:06). That is, no other individuals or entities congregated near a main entrance and vendors of Street Fest for approximately thirty minutes engaging in expressive activities with large elevated signs and amplification equipment that could be heard "across a busy three-lane street." (Sessler Response and Reply Brief, p. 10; City App. 74, Sessler Dep. 118:7 – 119:3). More

importantly, Sessler completely disregards the fact that it is his burden to prove the City and Defendant Officers ignored comparable threats of disruption to Street Fest. *Watkins, Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (the burden is on the movant to show that a motion for preliminary injunction should be granted); *Powell*, 36 F.Supp.3d at 836 ("Plaintiff has offered no evidence that Fair rules were applied to him and not to other persons conveying a different type of message…."). This is a burden Sessler cannot satisfy. (City App. 74, Sessler Dep. 117:20-118:06).

In sum, the City allows First Amendment activities and speech in a multitude of manners, but Sessler and his colleagues cannot interfere with the orderly flow of attendees at the City's special events or otherwise disrupt the City's special events. The restriction on Sessler and his colleagues' conduct was consistent with "[the] forum's special attributes." *Heffron*, 452 U.S. at 650.[2] The restriction did not address the content of the message, but only the disruption and interference with orderly movement of festival attendees created by Sessler and his colleagues' expressive activities. The City did not restrict the exercise of free

[2] Sessler erroneously contends *Heffron* is only applicable to the extent Street Fest is a limited public forum. (Sessler Response and Reply Brief, pp. 16-17, 21). *Powell*, 36 F. Supp. 3d at 834 ("[T]he *Heffron* Court, finding the Minnesota State Fair to be a 'limited public forum' applied the 'intermediate scrutiny' time, place and manner analysis…."); *Johnson*, 729 F.3d 1094 at 1100 ("[C]ontrolling crowds can constitute a significant governmental interest that bears directly on public safety." (citing *Heffron* 452, U.S. at 650-51)).

speech at Street Fest except to limit the "manner" of its exercise. Like *Heffron* it was a reasonable limitation on "time, place and manner." *Id.* at 641. Because the City placed reasonable time, place and manner restrictions on Sessler that served a significant governmental interest and left open ample alternative channels for communication, there can be no doubt the City placed reasonable and viewpoint-neutral restrictions on Sessler's conduct.

CONCLUSION

The City requests this Court to affirm the District Court's denial of Sessler's request for a preliminary injunction. The City requests this Court to reverse the District Court's conclusion that the sidewalks and streets comprising the City of Davenport's Street Fest were a traditional public forum and hold the sidewalks and streets comprising the City of Davenport's Street Fest were a limited public forum.

Dated this 27th day of April, 2020.

Respectfully submitted,

BY: s/ Jason J. O'Rourke
Jason J. O'Rourke
Alexander C. Barnett
LANE & WATERMAN LLP
220 N. Main Street, Suite 600
Davenport, IA 52801
Telephone: (563) 324-3246
Facsimile: (563) 324-1616
Email: jorourke@l-wlaw.com
Email: abarnett@l-wlaw.com

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This brief complies with the type volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,701 words, excluding parts of the brief exempted by Fed R. App. P. 37(a)(B)(iii).

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I hereby certify that on April 27, 2020, I filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit at Thomas F. Eagleton Courthouse, Rm 24.329, 111 South 10th Street, St. Louis, MO 63102, by electronic filing with the CM/ECF system.

BY: s/ Jason J. O'Rourke
Jason J. O'Rourke

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