

August 4, 2008

Mr. Mike Wiese, Chairman  
Brown County Commission  
25 Market Street  
Aberdeen, SD 57401

Via Fax (605) 626-4010  
and Certified Mail

Re: Demand to Reinstate Booth Rights and Privileges – Brown County Fair; *South Dakotans for Open and Clean Government* Ballot Question Committee

Dear Mr. Wiese:

I am legal counsel to the *South Dakotans for Open and Clean Government* Ballot Question Committee (“O&CG”). My client has forwarded its records to me relating to the revocation of its booth rights and privileges by the Brown County Commission and/or the Brown County Fair Board. The purpose of this letter is to notify you of my client’s demand for the reinstatement of those rights and privileges. Your refusal or failure to do so **by 5:00 p.m. (CT) on Tuesday, August 5, 2008, will result in my client’s immediate filing of a civil action in Federal District Court.** Such an action would be brought under 28 U.S.C. § 1331 because the claims arise under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), because it would be brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), because it would seek to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983; under 28 U.S.C. § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief and damages.

On or about July 15, 2008, Dena Espenscheid, acting on behalf of O&CG, called the Brown County Fair and spoke to Rochele Moser. Ms. Moser assured Ms. Espenscheid that booths were still available and assigned Booth #23 to Ms. Espenscheid. A check for \$250 was immediately mailed to the Brown County Fair, and deposited by the Brown County Auditor. Last week, the Fair Board sent Ms. Espenscheid a contract and information on the fair and booth. The contract was signed and returned. On July 31, the O&CG received a check from the Brown County Auditor dated and postmarked July 30, 2008 in the amount of \$250 with the simple, handwritten explanation of “Refund Booth Rental Brown County Fair.”

As you are well aware, O&CG is a valid South Dakota Ballot Question Committee the purpose of which is to promote the passage of Initiated Measure 10, entitled the South Dakota Open and Clean Government Act, on November 4, 2008. This measure is opposed by the South Dakota Association of County Commissioners and the Brown County Commission.

The Brown County Fair is a public event. In fact, “the fair has opened up to all residents of the county and a large variety of exhibit choices. . . . There is no gate fee so the fair is

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available to everyone everyday for fun and enjoyment. The Brown County Fair has once again become a major entertainment and social event as fair week is a great family tradition.”<sup>1</sup>

Under paragraph 8 of the Privilege Contract, grounds for revocation of the rights and privileges are conduct which is detrimental to the health, welfare, morals or safety of the any person attending the fair. Clearly, this event is open to a large number and variety of exhibitors, including political parties and candidates. There is nothing about O&CG’s activities which constitute a detriment to the health, welfare, morals or safety of fair attendees. The official action by the Brown County Commission or its members and, if applicable, to the Brown County Fair Board is intended to squelch the free speech rights of O&CG and its supporters on the basis of opposition to Initiated Measure 10 which will be appear on the November 4 statewide ballot. As such, it constitutes viewpoint discrimination in violation of my client’s rights under the First and Fourteenth Amendments of the U.S. Constitution and a violation of my client’s civil rights.

As further evidence of this official action violating my client’s rights, I am in possession of recorded conversations which support our position, to wit:

Call #1

Larry Gerlash, Fair Manager -

“My supervisors told me I had to [refund your money].”

“They classified your cause (inaudible) as far as what it was for.”

“It was not exactly my decision.”

Maxine Taylor, County Auditor –

“The County, I mean the Commission just chose not to lease those lots.”

“Basically we chose not to rent you a booth.”

Could not give examples of groups that had been denied a booth prior to the fair (probably has happened).

Suggested Ms. Espenscheid call Mr. Weise and Mr. Wilcox – had both numbers without hesitation.

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<sup>1</sup> Quote taken from the Brown County Fair web site, [www.thebrowncountyfair.com](http://www.thebrowncountyfair.com).

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Call #2

Bob Wilcox, Executive Director of the SD County Commissioners Association –

“I will have to visit with the commissioners to find out what happened.”

“I was not in on the decision.”

“I presented to my district up there last week, but I don’t know if that brought this to an awareness or not.”

Mike Wiese, Chairman of Brown County Commission –

“We decided not to entertain your request.”

“The fair board and the county retain the option to refuse anyone at our discretion and the discussion was had and the decision was made that your organization was not one that we want to have at the fair.”

The political parties have booths.

“It is at our discretion; we made the decision that yours will not be at our fair.”

“I’m not the only one that’s opposed to Initiated Measure 10.”

Call #3

Tom Fischbach, Commission Member –

“Yeah, we’re taking it away from you.”

“Yeah, we don’t agree with anything you represent.”

“I had nothing to do with that decision.”

“Fair Board decides who has a booth and who doesn’t. You’re not getting one, so don’t waste your time calling me.”

Call #4

Dennis Fiekert, Commission Member, serves on the Fair Board –

“I have no idea at all. Never...Didn’t...Haven’t heard about it before.”

“It has not [been discussed] as far as I know.”

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“It [IM10] has not as far as I know.”

“I honestly have not...I do not know who would have made the decision that the check would have been refunded and I do not know why.”

“We have a fair board meeting Saturday morning – I just got a thing in the mail – and I will bring it up.”

Deb Knecht is also on the board. He gave me her number.

“I would say that if the decision was made, it was either made by the executive committee or by the manager himself.” It was not brought up by the fair board as far as I know.”

Call #5

Nancy Hansen, Commission Member, President of the SDACC –

“You need to talk to the county auditor or the county chairman.”

“The county commission made the decision.”

“You need to talk to Mike Weise.”

Again, my client demands that its booth rights and privileges be reinstated immediately. My client will forward payment to the Brown County Treasurer for the \$250 or bring it to the fair. I trust that you will agree that the actions discussed above are clearly in violation of my client's free speech rights and reflect badly upon the Commission. Should I not receive a favorable reply by 5:00 p.m. (CT) tomorrow, August 5, then I have been instructed to immediately file suit in Federal District Court to seek a temporary injunction from the continued violations. If you have legal counsel, please have that individual contact me immediately.

Trusting that we will be able to resolve this matter without the necessity of court intervention, I remain,

Sincerely yours,

Stephen J. Wesolick

SJW/lw