



September 23, 2025

Sheriff Kurt J. Schneider  
Ashland County Sheriff's Office  
1205 East Main Street  
Ashland, Ohio 44805

Ashland County Fair Board  
2042 Claremont Avenue  
Ashland, Ohio 44805

*Sent via U.S. Mail and Electronic Mail (sheriff@ashlandcountysheriff.org;  
ashfair@zoominternet.net)*

Dear Sheriff Schneider and Members of the Ashland County Fair Board:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by Ashland County officials' removal of local Democratic Party members from this year's county fair and by the Sheriff's Office's threat to prosecute them over the political buttons they sold. The First Amendment squarely protects the buttons' messages, which cannot serve as the basis for any government investigation or punishment.

Our concerns arise from events at the Ashland County Fair on September 18, 2025.<sup>1</sup> The Ashland County Democratic Party had a booth where they sold political buttons, some of which were critical of President Donald Trump. One depicted a red cap reading "Felon," with the words "Is he dead yet?" printed below. Another featured a red cap reading "Resist," the number "8647,"<sup>2</sup> and the phrase "Democracy demands public education." After a fairgoer complained about the buttons, fair officials asked the booth staff to put them away. After receiving more complaints, officials shut down the booth and law enforcement escorted the Ashland

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<sup>1</sup> The narrative in this letter reflects our understanding of the pertinent facts based on local reporting. See Scripps News Group, *Ohio sheriff considering criminal charges over Democrats' Trump buttons at fair*, KSHB (Sept. 20, 2025), <https://www.kshb.com/politics/ohio-sheriff-considering-criminal-charges-over-democrats-trump-buttons-at-fair>. If you have more information, we invite you to share it with us. We do not currently represent any Ashland County Democratic Party members but write to you in our capacity as advocates for free expression.

<sup>2</sup> "'86' generally means to throw out or nix. '47' refers to Trump — the 47th president." April Rubin, *What to know about "8647" after James Comey's Instagram post*, AXIOS (May 16, 2025), <https://www.axios.com/2025/05/16/8647-meaning-comey-trump-protest>.

Democrats off the fairgrounds. The Sheriff's Office reported the incident to the Secret Service and began considering possible criminal charges on grounds the buttons were "threatening."

These actions strike at the heart of the First Amendment. Government officials may not suppress or punish speech because they dislike its viewpoint. Expelling the Ashland Democrats from the fairgrounds for the protected expression on their buttons was unconstitutional. Pursuing charges would present a new and even graver violation of their rights.

The law is unequivocal: "The government may not discriminate against speech based on the ideas or opinions it conveys."<sup>3</sup> Viewpoint discrimination is "censorship in its purest form" and "threatens the continued vitality of free speech."<sup>4</sup> That prohibition applies categorically, regardless of the property or forum in which the speech occurs.<sup>5</sup>

This principle applies with special force to restrictions on political expression, which is "at the core of what the First Amendment is designed to protect."<sup>6</sup> Criticism of political leaders, in particular, must be viewed "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."<sup>7</sup> The First Amendment safeguards "not only informed and responsible criticism" but also "the freedom to speak foolishly and without moderation," especially when criticizing "public men and measures."<sup>8</sup>

The buttons sold at the Ashland County Fair fit squarely within this tradition of acerbic but constitutionally protected political rhetoric. The actions of both fair officials and the Sheriff's Office were unconstitutional. By ordering removal of the buttons, shutting down the booth, and expelling the Ashland Democrats from the fairgrounds, officials silenced speech solely because of its viewpoint.<sup>9</sup> While the buttons may have offended some fairgoers or officials, that does not strip them of First Amendment protection. It is a "bedrock principle underlying the First

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<sup>3</sup> *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (viewpoint discrimination is an "egregious" form of censorship—the "government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction").

<sup>4</sup> *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 248 (6th Cir. 2015) (*en banc*) (cleaned up).

<sup>5</sup> *Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 490–91 (6th Cir. 2020). Even in non-public fora—public property "not by tradition or designation a forum for public communication"—viewpoint discrimination is impermissible. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983).

<sup>6</sup> *Virginia v. Black*, 538 U.S. 343, 365 (2003).

<sup>7</sup> *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); see also *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) ("[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.").

<sup>8</sup> *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944).

<sup>9</sup> Government officials may impose reasonable, content-neutral time, place, and manner restrictions in a public forum such as a county fair. *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981). But that principle has no application here: the restrictions expressly targeted the buttons' viewpoint.

Amendment” that officials cannot restrict speech simply because some find it “offensive or disagreeable.”<sup>10</sup>

Even if officials acted based on fairgoers’ complaints about the buttons rather than personal disapproval, that would not cure the First Amendment violation. It would amount to an unconstitutional “heckler’s veto”—silencing a speaker to placate those opposed to their message. Even the “possibility of violence” from outraged third parties does not justify the government silencing unpopular or controversial speakers.<sup>11</sup> The “freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker’s message.”<sup>12</sup> And by reporting the incident to the Secret Service and opening a criminal investigation, the Sheriff’s Office escalated the suppression into law-enforcement retaliation.

There is no serious argument the buttons communicated a true threat. The First Amendment does not protect true threats, but the definition is narrow and exacting. A true threat is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”<sup>13</sup> It does not extend to “inadvertent statements, mistakes, jests, hyperbole, innocuous talk, or political commentary not objectively intended to express a real threat.”<sup>14</sup> And so it does not extend to the buttons at issue here. In the landmark true threats case *Watts v. United States*, the Supreme Court reversed a Vietnam War draftee’s conviction for telling a crowd of anti-war protesters, “If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.,” recognizing the statement as “political hyperbole” and not a true threat to kill the president.<sup>15</sup>

So too here. It strains credulity to believe the Ashland Democrats expressed a serious intent to commit unlawful violence. They were at a county fair selling political buttons, which communicated opposition to President Trump but not an intent to do *anything*, let alone assassinate him.<sup>16</sup> Their generalized, plainly rhetorical slogans are even further from a true threat than Watts’ statement, which made a direct, first-person reference to shooting President Johnson.

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<sup>10</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>11</sup> *Bible Believers*, 805 F.3d at 252.

<sup>12</sup> *Id.*

<sup>13</sup> *Black*, 538 U.S. at 359.

<sup>14</sup> *United States v. Alkhabaz*, 104 F.3d 1492, 1505 (6th Cir. 1997).

<sup>15</sup> 394 U.S. 705, 708 (1969).

<sup>16</sup> Compare President Trump’s own comments about former Rep. Liz Cheney: “Let’s put her with a rifle standing there with nine barrels shooting at her, OK. Let’s see how she feels about it, you know, when the guns are trained on her face.” See Emily Brooks, *Trump spurs backlash with Cheney guns “trained on her face” remarks*, THE HILL (Nov. 1, 2024), <https://fox5sandiego.com/news/politics/trump-spurs-backlash-with-cheney-guns-trained-on-her-face-remarks>. Despite widespread condemnation of his remarks as a death threat, his campaign defended the comments as criticism of Cheney’s foreign policy views. The episode underscores the crucial difference between hyperbolic political rhetoric and actual threats.

One button referred to the president as a “felon” and rhetorically asked “Is he dead yet?” At most, it expressed a wish for the president’s demise. But merely wishing someone dead is not a true threat, however repugnant some find it. In *Rankin v. McPherson*, the Supreme Court held the First Amendment protected a police department employee who, after hearing President Ronald Reagan had been shot, said, “If they go for him again, I hope they get him.”<sup>17</sup> Not only was the statement not prosecutable, it could not even justify the employee’s termination.<sup>18</sup>

Nor was the button displaying “8647” a true threat. “Eighty-six” is commonly used to mean removing a person from a place or position. When the Chicago Sun-Times reported that NBA coach Jim Boylen was “eighty-sixed by the Bulls,”<sup>19</sup> nobody thought it meant the Bulls’ front office had murdered him. Similarly, there are ways our 47<sup>th</sup> president can be “eighty-sixed” that do not involve murder, such as impeachment. And this is not the first time a political activist has used “eighty-six” to criticize a president. In 2022, for example, conservative commentator Jack Posobiec posted “86 46” on Twitter, referring to President Joe Biden.<sup>20</sup> He rightly faced no criminal charges. Nor has Amazon for selling political decals that read “8646” or “8647.”<sup>21</sup>

The buttons also do not fall within the “well-defined and narrowly limited” First Amendment exception for incitement.<sup>22</sup> Because the “language of the political arena ... is often vituperative, abusive, and inexact,” and may include rhetoric with violent overtones, the First Amendment requires speech to meet an exacting standard to qualify as unprotected “incitement.”<sup>23</sup> That exception applies only to speech that (1) “specifically advocate[s] for listeners to take unlawful action,” (2) is “directed to inciting or producing *imminent* lawless action,” and (3) is “likely to incite or produce such action.”<sup>24</sup> Language must be evaluated in context, not simply “read literally on [its] face,” as reasonable people do not mistake figurative speech or rhetorical flourishes “for literal commands or directives to immediate action.”<sup>25</sup>

There is no evidence the Ashland Democrats intended the buttons to convey literal directives to assassinate President Trump, and no reasonable person would understand them to have

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<sup>17</sup> 483 U.S. 378, 381 (1987).

<sup>18</sup> *Id.* at 386–87, 392.

<sup>19</sup> Steve Greenberg, *Does Bulls VP Arturas Karnisovas know which way is up? Hint: It’s the only way*, CHICAGO SUN-TIMES (Aug. 15, 2020), <https://chicago.suntimes.com/sports-saturday/2020/8/15/21369504/bulls-arturas-karnisovas-jim-boylen-2020>.

<sup>20</sup> Jack Poso (@JackPosobiec), TWITTER (Jan. 29, 2022, at 11:23 PM ET), <https://x.com/JackPosobiec/status/1487642601536864256>.

<sup>21</sup> *8646 Oval White & Black Sticker*, AMAZON, <https://www.amazon.com/Bumper-Sticker-Decal-Laptop-White/dp/B09J41Y6ZR>; *Number 8647 Oval Sticker*, AMAZON, <https://www.amazon.com/US-Decal-Inc-Number-Sticker/dp/B0CCG45HL3>.

<sup>22</sup> *United States v. Stevens*, 559 U.S. 460, 468–69 (2010).

<sup>23</sup> *Watts*, 394 U.S. at 708.

<sup>24</sup> *Nwanguma v. Trump*, 903 F.3d 604, 609–11 (6th Cir. 2018) (emphasis added); see also *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (incitement requires a showing that speech was “directed to inciting or producing imminent lawless action and ... likely to incite or produce such action”).

<sup>25</sup> *McCollum v. CBS*, 202 Cal. App. 3d 989, 1002 (1988).

done so; the buttons were simply pointed political commentary.<sup>26</sup> And even assuming for the sake of argument that *was* their intended message, displaying the buttons still would not constitute incitement because there was no realistic risk a fairgoer would see them and then make an immediate attempt on the president’s life. Speech that merely advocates unlawful action “at some indefinite future time” remains protected by the First Amendment.<sup>27</sup>

The buttons did nothing more than express opposition to a government official—speech the First Amendment jealously guards. To be sure, many may find the buttons offensive or unsettling, especially after the horrific assassination of political activist Charlie Kirk. They are free to exercise their own rights to condemn both the buttons and those who displayed them. But the First Amendment does not permit government officials to punish speakers simply because their words touch a nerve in a charged moment. The “remedy to be applied is more speech, not enforced silence.”<sup>28</sup>

FIRE calls on the Sheriff’s Office to immediately cease any investigation concerning the buttons and to publicly acknowledge their protection under the First Amendment. We further call on the County Fair Board to confirm that fair officials will refrain from restricting speech based on viewpoint at future events.

Be advised that government officials are not entitled to qualified immunity—and therefore may be held personally liable—when they violate “clearly established” constitutional rights.<sup>29</sup> The right to be free from government investigation or punishment based on one’s political views is among the most clearly established rights in our constitutional order. FIRE is committed to using all the resources at our disposal to vindicate that right and see this matter to a just conclusion.

We request a substantive response no later than September 30, 2025.

Sincerely,



Aaron Terr  
Director of Public Advocacy

Cc: Ashland County Prosecutor’s Office

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<sup>26</sup> In a statement following the incident, the Ashland Democrats wrote: “We hear those in our own party and those in opposition who feel those buttons were in poor taste. In retrospect, given the emotions running high in the wake of the Charlie Kirk assassination and subsequent scrutiny of criticism by the government, we should have thought about this more. We strongly oppose many of the policies of the Trump administration. We feel they are damaging the country. We express our ideas using our words and peaceful demonstrations. We do not and will never endorse political violence.” *Ashland County Democrats*, <https://www.ashlandcountydemocrats.com>.

<sup>27</sup> *Hess v. Indiana*, 414 U.S. 105, 108 (1973).

<sup>28</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).

<sup>29</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).