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July 21, 2011

Ms. Wanda Greene
County Manager
205 College Street, Suite 300
Asheville, NC 28801

Re: removal of newspaper boxes

Dear Ms. Greene:

This firm represents the *Mountain Xpress* and the *Asheville Citizen-Times*, and I write to object to the County's removal of newspaper boxes from public property. At the end of June, without permission or warning, county employees removed newspaper boxes from the public property adjacent to the courthouse. Removal of the newspaper boxes is a violation of the First Amendment and the North Carolina constitutional provision that "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained" Removal of the boxes also is a deprivation of the rights of the public to free access to the news.

As the Supreme Court has written, the government may regulate speech in a public forum only upon a showing that the "regulations of the time, place, and manner of expression ... are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). *Accord United States Postal Service v. Council of Greenburgh*, 453 U.S. 114 132 (1981); *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S. 530, 535-36 (1980); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Schneider v. State of New Jersey*, 308 U.S. 147 (1939). As one court has described it, "the power of the government to restrict expressive conduct [in a public forum] is extremely limited." *Pittsburg Unified Sch. Dist. v. California Sch. Employees Assn.*, 213 Cal. Rptr. 34, 47 (Cal. Ct. App. 1985).

Specifically addressing whether the sidewalks surrounding the United States Supreme Court were a public forum, the Court wrote:

Sidewalks, of course, are among those areas of public property that traditionally have been held open to the public for expressive activities and are clearly within those areas of public property that may be considered, generally without further inquiry, to be public forum property. *** The public sidewalks forming the perimeter of the Supreme Court grounds, in our view, are public forums and should be treated as such for First Amendment purposes.

United States v. Grace, 461 U.S. 171, 179-80, 103 S. Ct. 1702, 1708, 75 L. Ed. 2d 736 (1983)

With regard to *newspaper boxes* in particular, the Supreme Court has written that there is a “right to distribute ... newspapers on the city's streets, as others have a right to leaflet, solicit, speak, or proselytize in this same public forum area.” *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 778, 108 S. Ct. 2138, 2155, 100 L. Ed. 2d 771 (1988). The Eleventh Circuit described “an increasingly lengthy body of Supreme Court and federal precedent emphasizing that there is ‘no doubt’ that the right to distribute and circulate newspapers through the use of news racks is protected by the first amendment.” *Sentinel Communications Co. v. Watts*, 936 F.2d 1189, 1196-97 (11th Cir. 1991).

It is my understanding the County's action was taken solely on the basis that someone believed the newspaper boxes were not aesthetically pleasing and detracted from recent renovations to the courthouse. We have photographs of the newspaper boxes as they were placed and of the courthouse area once they had been removed. The sidewalk where the boxes were located is very wide. The boxes were located on both sides of the steps and were tucked against the edge of the sidewalk such that they did not extend into the sidewalk even as far as the steps. There can be no dispute that removal of the newspaper boxes was **not** “necessary to serve a compelling state interest” that could not be achieved in any other way. *Carey v. Brown*, 447 U.S. 455, 461 (1980).

By this letter, I also am requesting copies of any county documents -- including but not limited to emails, correspondence, memos, draft or final policies or ordinances -- that analyze, discuss, address or otherwise relate to placement of newspaper boxes or racks in Buncombe County, including the minutes of any meeting at which the Buncombe County Board of Commissioners discussed newspaper boxes or racks.

I urge you to return the newspaper boxes to their original positions. We welcome the chance to resolve this issue without resort to litigation, and I would be happy to discuss the matter with you. The best way to reach me is by email (amartin@smvt.com) or on my cell phone (919 810 6246). I hope to hear from you.

Very truly yours,

STEVENS MARTIN VAUGHN & TADYCH, PLLC



C. Amanda Martin

cc: Michael Frue, Esq.