



February 5, 2015

OPEN LETTER TO THE ST. MARTINVILLE POLICE DEPARTMENT
REGARDING MARDI GRAS PARADE

By fax 337-394-7982 and by
Regular mail
Mr. Calder Hebert
Chief of Police
City of St. Martinville
105 S New Market St,
Saint Martinville, LA 70582

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
LOUISIANA
PO BOX 56157
NEW ORLEANS, LA 70156
T/504.522.0617
WWW.LAACLU.ORG

Dear Chief Hebert:

We have learned from the Teche News (Jan. 28, 2015) that the St. Martinville Police Department has agreed to enforce rules banning “floats playing rap music with obscene lyrics.” We have seen varying news stories as well as a copy of the rules provided us by the New Comers Club, all of which differ from one another. We therefore address concerns arising from several reports and the planned enforcement of the rules that we have seen.

First, we recognize that the New Comer’s Club is a private organization with the right to set rules for participation in its parade. Our concern is not whether or how a private club may regulate participation in its event, but rather how police will enforce those rules. For a rule to be enforceable by the police, it must provide clear guidance so that the public will know what they may and may not do, and it must not violate Constitutional rights. The rules that we have seen fail to meet those standards, and while the New Comer’s Club may enforce them as it sees fit, the St. Martinville Police Department may not.

With respect to the Teche News statement regarding “rap music,” it is generally understood that “rap” music is most frequently performed by African-American artists, and is widely viewed as popular among African-American audiences. For instance, “rap music” is defined as a “genre of African-American music of the 1980s and 1990s in which rhyming lyrics are chanted to a musical accompaniment; several forms of rap have emerged.”

<http://www.webster-dictionary.org/definition/rap%20music>.

Singling out “rap” music as the only genre of music subject to regulation can lead to racial profiling and implies that other music that might also include “obscene” lyrics would be permitted.

Because it is not always easy to categorize a piece of music into a genre, restricting “rap” music alone can lead to subjective judgments by law enforcement, without clear standards as to what type of music is permitted and what is not. No participant in the parade should have to fear penalties because of what a particular officer may deem to be “rap,” as opposed to another type of music.

If the purpose of the regulations is to restrict “obscene” lyrics altogether, that is not how it was described by the Teche News. That said, the United States Supreme Court has ruled that to be obscene, a work must meet all three of the following criteria:

1. Whether "the average person, applying contemporary community standards", would find that the work, taken as a whole, appeals to the prurient interest,
2. Whether the work depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law,
3. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller v. California, 413 U.S. 15 (1973). Rap music is a recognized art form, critically acclaimed by many. It is generally considered to have artistic value, and the lyrics are often viewed as poetry. The Ivy League University of Pennsylvania, in connection with its 2013-2014 “Year of Sound,” assigned *Book of Rhymes: The Poetics of Hip Hop*, by Adam Bradley, to all first-year students. Included in that book is a chapter entitled “Rap Poetry 101 & Rhythm.” See

<https://secure.www.upenn.edu/themeyear/sound/component/content/article/243.html>.

By legal definition, rap music, as a recognized art form, cannot be “obscene” because it does not “lack serious literary, artistic, political, or scientific value.” Also see *Bell v. Itawamba Cnty. Sch. Bd.* (No. 12-60264, 5th Cir., 2014) (defining rap music as “a musical genre that, like other art forms, has its own unique artistic conventions”).

Nor may a Louisiana municipality regulate more stringently than the definition of “obscenity” in LSA R.S. 14:106, which comports with the Supreme Court’s requirements:

14:106(E): This Section does not preempt, nor shall anything in this Section be construed to preempt, the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments; however, in order to promote uniform obscenity legislation throughout the state, the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments shall not exceed the scope of the regulatory prohibitions contained in the provisions of this Section.

Therefore, the City of St. Martinville is barred from censoring music that is legally protected First Amendment expression.

A different report on the enforcement of rules of the New Comers Parade from KATC.com, <http://www.katc.com/story/27917163/no-vulgar-music-allowed-at-st-martinville-mardi-gras-parade>, states that “vulgar and obscene music will not be

February 5, 2015

Page 3 of 3

tolerated.” But without a definition of “vulgar,” this rule is again subject to the whims of an individual officer. “Vulgar” to one is not “vulgar” to all, and parade participants have the right to know in advance what is banned and what is not. Moreover, “vulgarity” is protected under the First Amendment, because only “obscenity” can be banned.

While the New Comer’s Club may set its own rules, the police may not engage in prior restraint by censoring speech or expression in advance. Since 1931, the U.S. Supreme Court has held that government may not ban speech or expression before it occurs, with limited exceptions for matters of national security. *Near v. Minnesota*, 283 U.S. 697 (1931). Any rule that bans protected speech in advance is presumptively unconstitutional. St. Martinville may therefore not enact or enforce any restrictions on legally protected music or other forms of expression during the upcoming parade.

This applies to other forms of protected expression listed in the rules as well, namely “body gestures and vocal outbursts,” which are legally protected expressive activity, as well as vaguely defined (a “body gesture” could include waving to a friend in the crowd, and a “vocal outburst” could mean calling someone’s name).

In sum, while the rules set by the New Comer’s Club may be permissible internal regulations for the club to ensure that the parade meets its standards; these rules do not meet the Constitutional standard required for enforcement by the government. We therefore urge the St. Martinville Police Department to refrain from violating the protected rights of those in the parade and along the route.

Sincerely,



Marjorie R. Esman
Executive Director

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
LOUISIANA
PO BOX 56157
NEW ORLEANS, LA 70156
T/504.522.0617
WWW.LAACLU.ORG