TO WHOM IT MAY CONCERN:

I write to advise as to the constitutional right to engage in expressive conduct such as displaying a banner on a highway overpass that also serves as a pedestrian walkway. The "use of signs and banners to express a religious viewpoint is at the core of the speech that the First Amendment protects." *Ovadal v. City of Madison*, 416 F.3d 531, 536 (7th Cir.2005) (citing *Boos v. Barry*, 485 U.S. 312, 318 (1988) and *Thomas v. Collins*, 323 U.S. 516, 537 (1945)). Moreover, "'if there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.'" *Ovadal*, 416 F.3d at 536 (quoting *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

These rights apply with equal force to expressive conduct that occurs on a highway overpass where that overpass also serves as a pedestrian walkway. "'A public sidewalk does not lose its status as a traditional public forum when it passes over a highway overpass.'" *Ovadal*, 416 F.3d at 536. "All public sidewalks 'are held in the public trust and are properly considered traditional public fora.'" *Id*. (quoting *Frisby v. Schultz*, 487 U.S. 474, 481 (1988)). "When speech takes place in a traditional public forum, it receives heightened constitutional protection." *Ovadal*, 416 F.3d at 536.

Accordingly, the mere fact that some passerby might react negatively to the message displayed on the banner is no excuse to silence the speech. "If a restriction is based on the content of the speech, it is unconstitutional unless the state can prove that the regulation is necessary to serve a compelling state interest and that the regulation is narrowly drawn to achieve that end." *Ovadal*, 416 F.3d at 536 (citing *Frisby*, 487 U.S. at 481). "'Speech cannot . . . be punished or banned, simply because it might offend' those who hear it." *Ovadal*, 416 F.3d at 537 (quoting *Forsyth County*, 505 U.S. at 134-35). "The police must preserve order when unpopular speech disrupts it; 'does it follow that the police may silence the rabble-rousing speaker? Not at all. The police must permit the speech and control the crowd; there is no heckler's veto.'" *Ovadal*, 416 F. 3d at 537 (quoting *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993)).

Be advised, therefore, that should our clients be prohibited from exercising their First Amendment rights, we will take all appropriate measures to vindicate their rights, up to and including the filing of a federal lawsuit under 42 U.S.C. §1983.

We appreciate your thoughtful consideration of this case law. Should you have any questions concerning these matters or the conduct of our clients, please do not hesitate to call.

Sincerely,

Thomas Brejcha
President and Chief Counsel
Thomas More Society