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John G.: Files SERIES I: Subject File

THE WHITE HOUSE
WASHINGTON

8/29/84

To: John Roberts ✓
Sherrie Cooksey

From: Fred F. Fielding

I would like your comments on the
issue of constitutionality on the
enclosed draft this afternoon.

this afternoon.

THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: SHERRIE M. COOKSEY *SMC*
JOHN G. ROBERTS *JGR*

SUBJECT: Draft Press Guidance Regarding
Signs at Reagan-Bush Rallies

This will respond to your request for our views on the constitutionality of the above-referenced press guidance.

The guidelines in the proposed press guidance assume two categories of Reagan-Bush rallies: those to which the general public is invited (§ 3), and those the campaign totally controls, by renting the facility, limiting admittance to ticketed individuals, etc. (§ 4).

on in § 3. In our opinion, the exception in § 3 to the general principle of no restrictions on signs at public Reagan-Bush rallies is susceptible to constitutional challenge. Applicable case law recognizes that government may place "time, place, and manner" restrictions on certain expressions of First Amendment freedoms. Such restrictions, however, must be "content-neutral, ... narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." Perry Education Association v. Perry Local Educators' Association, 103 S. Ct. 948, 955 (1983). In this instance, the proposed guidelines are content-neutral. It is doubtful, however, that easing entry into a political rally would be considered a significant enough government interest to support the proposed total ban on signs. Nor is it likely that a total ban on signs would be considered "narrowly tailored" to promote this interest. Rather, it is more likely that a Federal judge would simply say that more magnetometers should be obtained, or that it is not a significant enough government interest that 4000 rather than 6000 people be granted entry to a Presidential campaign rally to infringe First Amendment rights in this manner. Accordingly, we recommend revising § 3 of these proposed guidelines to read as follows:

- at rallies or events to which the general public is invited, it is expected that any hand-held signs (not on sticks) will be permitted.

Although we believe the guidelines for use of signs in ticketed or "private" Reagan-Bush rallies are constitutionally defensible, we note that it will always be a question of fact whether

such events are, in fact, "private" as opposed to "quasi-public". The applicable case law has varied on the extent to which restrictions on speech at "quasi-public" forums (such as privately-owned shopping centers) are permissible. Accordingly, while we agree that Reagan-Bush may reserve the right to determine who may attend and what material, if any, may be brought into its "private" events, we recommend the Advance Office be advised to consult us before any sign restrictions are established for large ticketed events. Additionally, we recommend that the Advance Office be advised that while it is true that any restrictions on signs must be implemented without regard to the content of the signs, non-discrimination is not the only element involved in creating sustainable restrictions on the use of signs at Reagan-Bush rallies.

Finally, absent compelling press interest to the contrary, we suggest that these guidelines be used only internally at this time.

THE WHITE HOUSE

WASHINGTON

Draft

PRESS GUIDANCE REGARDING SIGNS AT RALLIES

Recognizing that any policy should and will be consistent with the First Amendment rights of all individuals, the following guidelines are being observed by Reagan-Bush '84 personnel and volunteers:

- signs of any nature will not and never have been prohibited along parade and motorcade routes or other public areas, unless the Secret Service acts independently to limit particular signs at its discretion for security reasons,
- as a matter of security, the Secret Service will not allow signs on sticks or that could otherwise be used as a weapon or hurled harmfully to be carried into campaign rallies for the President,
- at rallies or events to which the general public is invited, ~~it is expected that any hand-held signs (not on sticks) will be permitted, unless it is obvious that due to time constraints it is necessary to restrict the entry of signs in order to provide access to the maximum number of people to the restricted area of the rally.~~ In such event, all signs (pro or con) will be excluded,
- at rallies or events which Reagan-Bush '84 totally controls, i.e., to which admittance is by ticket only, the facility is leased by Reagan-Bush, etc., the Committee reserves the right to determine who may attend and what material, if any, may be brought into the event.
- In Cincinnati, as a means of facilitating the security screening process (i.e., entry through magnetometers) of an expected crowd of downtown lunch hour individuals, a decision was made by the White House advance personnel to prohibit any signs -- pro or con -- from being carried into the rally area for which the campaign had obtained a permit. This was done in an attempt to avoid the problem incurred in Elizabeth, New Jersey where over 1,000 individuals never gained access to the outdoor rally due to a jam-up at the magnetometers.

THE WHITE HOUSE

WASHINGTON

Further Guidance (Background):

At recent Presidential events it is obvious that there has been no attempt to stifle dissent, in fact, there have been numerous examples of demonstrators exercising their right to dissent resulting in disruption of the President's remarks.

Cincinnati -- see attached transcript.

Elizabeth, New Jersey (outdoor rally) -- chanters and sign carriers. The President acknowledged them in his remarks and commented extemporaneously about their issue/the state of the domestic ship building industry.

Sedalia, Missouri -- two instances of individuals displaying signs and screaming and the President saying he might raise that individual's taxes.

In Cincinnati demonstrators and negative signs were in evidence within the secure area. Specifically, on the skywalk overlooking Fountain Square.

Staging large public events, particularly outdoors, creates a major challenge for the Advance Office to ensure the crowd wanting to attend the Presidential event can pass through the USSS magnetometers in a timely manner.

Recently in Elizabeth, New Jersey, over 1,000 individuals never gained admission through the magnetometers to see the President's event. It was resolved that everything possible should be done in the future to try to ensure that this not happen again. The Cincinnati event presented unique challenges. The Advance team recognized that the crowd would come from the downtown business area during lunchtime. As a means of expediting this expected late arriving crowd at the magnetometers, we instructed a policy of locating volunteer crowd ushers in front of the magnetometers to tell individuals to leave any signs, banners and physical objects outside.

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- *(e.g.)* at rallies or events which Reagan-Bush '84 totally controls, ~~to~~ to which admittance is by ticket only, the facility is leased by Reagan-Bush, etc., the Committee reserves the right to determine who may attend and what material, if any, may be brought into the event.
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