

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

WILLIAM F. HASSAY, JR.,	*	
	*	
<i>Plaintiff,</i>	*	
v.	*	Civil Action No. 13-cv-01076-ELH
	*	
MAYOR AND CITY COUNCIL OF OCEAN CITY, MARYLAND, <i>et al.</i>	*	
	*	
<i>Defendants.</i>	*	

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AFFIDAVIT OF WILLIAM F. HASSAY, JR.

My Background

1. My name is William F. Hassay, Jr., and I am a classically trained violinist. I have played violin for 50 years and professionally for over 34 years. For 13 years, I was a First Violinist in the Alabama Symphony Orchestra. I have also been a member of the Winnipeg Symphony Orchestra and the Florida Symphony Orchestra. Other orchestras I have performed in include: The Annapolis Symphony Orchestra, Richmond Symphony, Roanoke Symphony Orchestra, West Virginia Symphony Orchestra, Virginia Symphony, National Symphony Orchestra, and National Art Gallery Orchestra.

2. I have had the opportunity to share the stage and get to know famous musicians such as Doc Severinsen, Aretha Franklin, Rod Stewart, Yo-Yo Ma, Isaac Stern, Marion Anderson, Beverly Sills, Arthur Fiedler, Henry Mancini, Ella Fitzgerald, and Sarah Vaughan.

3. I am a resident of the state of Maryland. I live in Owings Mills and I am a substitute teacher for the Anne Arundel County Public Schools. Before I began teaching in Maryland, I worked for six years as the Enterprise Coordinator and Marketing Associate for

Volunteers of America -Chesapeake. My primary role at Volunteers of America was marketing and managing the vehicle donation program.

My Expression as a Street Performer

4. I have been a street performer for over 30 years—since the late 1970s—mostly in Nantucket, Massachusetts, Washington, D.C., Key West, Florida and Ocean City, Maryland. I was originally inspired to perform on the street when I was just out of college and working in a bank for minimum wage as a bank teller. I was walking down King Street in the Old Town neighborhood of Alexandria, Virginia and I saw two violinists playing Bach double violin concertos, and they had a pile of money in their case. I thought, “I can do that!” and the next night I tried it, playing in the Georgetown neighborhood of Washington, D.C.

5. My performance, my music, my art is this: I play an unamplified violin along with prerecorded background music, which is played through a speaker. I always limit the volume on the speaker because the violin must be heard as much as the background music. The art is the harmony and blending of the sound of the violin and the background music, and the emotions created by the two sounds together. It is a musical dialogue. For example, one song I play is a Sonata for Violin and Piano by Beethoven. The piano part is played through the speakers, and I play the violin part. Two voices (the violin and piano) are required for the piece to make any sense at all.

6. The point of my performances is not to show off my ability to play the violin, but to communicate particular emotions to my listener. I believe that being a competent musician is not about being able to play lots of notes on an instrument. It is about instilling emotional content into the notes you play, and the spaces between the notes, and inspiring a reaction from your listener. I play music to communicate romance, joy, and happiness. Having different styles

of background music as I do, ranging from orchestral to string quartet, piano alone, country, rock, jazz band, ragtime, new age, Broadway show tunes, pop, and more, provides me with the ability to be interesting, and to reach people with all kinds of musical tastes.

7. I have been privileged to perform on the Ocean City boardwalk since 1995. As soon as I started playing there, I found the boardwalk to be the ideal location for reaching a large number of people with my music. Adults and kids dance to my music on the boardwalk. Even babies bounce in their strollers. It is important to me that I might be creating memories for these families and that someday the kids will be bringing their kids to the boardwalk because of those memories.

8. When I was a symphony player, I performed hundreds of concerts in schools to expose children to the wonders of musical performance. The boardwalk is a place where I continue that work, reaching children who do not have those types of opportunities at school. Also, it is special to be able to let a blind child touch my violin while I am playing, and feel the vibrations. Or to capture the attention of severely autistic children, and see joy on the face of parents who recognize what is happening.

9. I believe that I am an asset to Ocean City. I go there, give my music away for free, and draw tourists. People tell me all the time that I make their trip to Ocean City worthwhile. One way I judge how many people I reach, and how much people like what I do, is the amount of money that is donated to me. In past years, I have received up to \$25,000 of donations in a year at the boardwalk, which helps supplement my income as a substitute teacher.

10. Over the years, however, Ocean City has reduced the locations available to street performers on the boardwalk. The current rules restrict artists to only the sections of the boardwalk where streets end. We are prohibited from performing at the biggest street end—the

intersection of the boardwalk and North Division Street. Within the approximately 30 by 30 foot space at each street end, we are not permitted to perform within 10 feet from the tram lane, 10 feet from tables, or 10 feet from businesses, and, of course, we cannot block foot traffic, trash cans, stairs, and ramps on the boardwalk. What remains are only a few spaces to perform, which guarantees that those few spots are almost always occupied by multiple performers during the summer season.

Problems I Encountered in 2012 with Ocean City's Noise Ordinance

11. I performed on the Ocean City boardwalk for years without incident until my permit was revoked in 2009 due to a new Ocean City law banning amplification. The ACLU of Maryland represented a number of us affected by the 2009 law in a challenge to that law and successfully secured the rescission of the ban without the need for us to become involved in litigation. After having to give up performing on the boardwalk in June 2009, while the lawyers were negotiating about the matter, my permit was returned to me in mid-July and I was able to return to performing.

12. In advance of the 2012 summer season, however, I read in the local news that Ocean City had once again enacted a new noise ordinance. Because I thought this might affect me, I went online and watched the Ocean City Council Meeting where city officials were discussing the noise ordinance. Much of the discussion was about certain shop owners who were blasting their music too loud over the boardwalk. I hoped that this was the real focus of the new law, and that it would not be applied in a way that caused problems for me or for other street performers.

13. I returned to Ocean City on June 6, 2012, and started playing music on the boardwalk that night. Over the next two weeks, I played five to six nights per week from about 3:00 p.m. to 11:00 p.m.

14. On June 18, 2012, I was playing music on the boardwalk, at the Dorchester Avenue street end designated for performers. I was approached by an Ocean City police officer who told me that I was in violation of the new noise ordinance.¹ The officer told me I was too loud, I had to turn my music down, and I was not allowed to be heard from 30 feet away.

15. I showed the officer a copy of a letter that the ACLU of Maryland wrote to Ocean City as part of the challenge to the prior 2009 law, and he commented, "That letter is three years old. The Constitution has changed and we have new laws now."

16. At my request, the officer next called his supervisor to come to the scene. Approximately five to ten minutes later, an officer, who I believe was Corporal Richard Wawrzeniak, arrived and told me that I was in violation of the noise ordinance. I told Corporal Wawrzeniak that I believed the ordinance was not supposed to apply to prevent protected free speech and showed him the 2009 ACLU letter.

17. Corporal Wawrzeniak told me that they had received a complaint from someone at Candy Kitchen, a candy shop with multiple locations on the boardwalk. I left my amplifier playing, and we walked over and into the Candy Kitchen. The music was barely on the threshold of audibility. I asked Corporal Wawrzeniak if he really believed the music was so loud as to interfere with the owners' ability to do business, and he just shrugged. I gave him the 2009 ACLU letter and he gave me a two-sided color copy of the text and explanation of the noise

¹ Unfortunately, I did not get this officer's name or badge number.

ordinance and his business card. A true and correct copy of that text and explanation is attached as Exhibit A.

18. Corporal Wawrzeniak told me that he would pass the 2009 ACLU letter on to his superiors and that I should get in touch with him by email in a couple of days to see if I could still do what I was doing. Ultimately, I did not follow up because I did not feel that it was appropriate for me to ask the Ocean City Police Department for permission to engage in constitutionally protected free speech.

19. After Corporal Wawrzeniak and the other officers left, I played the rest of the night of June 18, 2012 without incident. There were police all around, walking by and riding their bikes. The next day, I moved one block down to Somerset Street, and continued to play there without incident and with police passing by many times a day.

20. I kept playing as I have since 1995, and assumed that the issue was resolved, until I was approached again on Friday, June 22, 2012. Sergeant James Grady (badge number 8215) approached me and said, "If I can hear you from more than 30 feet away, you are in violation of the law." He said I was in violation of the noise ordinance, and that I was "way too loud." He further explained to me that if I was audible from a distance of 30 feet, I would be written a citation for violating the noise ordinance.

21. I wanted to record what Sergeant Grady was saying in order to ensure that I remembered what the Police Department's explanation of the law was, why they thought I was in violation of the law, and to have proof of what I was being told. So I took out my cell phone and started to record. But Sergeant Grady reached out with his hand to block the recording and asked that I cease recording. I stopped recording and put my phone away.

22. Sergeant Grady was soon joined by an officer whose last name was Eade (badge number 8227), Lieutenant Mark A. Pacini,² and two other officers. I asked who had complained about my performance and offered to move to a different location. Lieutenant Pacini refused to reveal the source of the complaint, and informed me that I had “used up my warnings” and that wherever I moved I would receive a citation if there was another complaint. I again reminded the officers that I believed this to be a violation of my constitutional rights and finally warned the officers that their actions might generate a lawsuit. Lieutenant Pacini responded, “Bring it on.”

23. I stopped playing music and left the boardwalk that evening. Since I do not think it is possible to play music containing the emotional content I desire without having it heard from more than 30 feet away, it seemed pointless to continue playing. To do so would be risking arrest, which would cause severe harm to me, my reputation, my employment, and the valuable equipment in my possession. As a law-abiding citizen, I decided not to return to perform on the boardwalk until the issue was resolved.

24. Part of the reason I took the police officers’ warnings so seriously is that I remain fearful of arrest by Ocean City police in particular because about 10 or 12 years ago I was wrongfully arrested by the Ocean City police for allegedly failing to pay for gasoline at a gas station. The charges were dismissed and expunged from my record. However, the memories of what can happen when you get arrested remain. When I was arrested, I was taken to jail and kept overnight. The police left my van on the side of the road with the windows down and my violin inside. I was afraid, confused, and forced to hire an attorney to prove my innocence. I realized then how important it is to me to obey the orders of officers and to do whatever is necessary to avoid being arrested.

² At some point, Lieutenant Pacini gave me his business card.

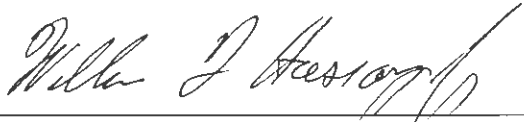
25. Since being forced to leave Ocean City in June 2012, I have been playing mostly in the Georgetown neighborhood of Washington, D.C. I enjoy playing in Georgetown, but no place is as good a fit for my music as Ocean City. I also receive much less in donations when I perform in Georgetown and am more at risk. I was mugged there in June 2012 and had a violin stolen—a violin that was precious to me, as my Dad bought it for me 50 years ago. I filed a police report and spent the evening at Georgetown University Medical Center. In Ocean City, I perform only 100 feet from my hotel room. This is as safe as one can be as a street performer, given the danger of having up to \$300 in \$1 bills.

Conclusion

26. Ocean City's noise ordinance has infringed on my First Amendment right to free speech on the boardwalk and hindered my ability to make a living. I called the ACLU of Maryland for assistance so that I could return to performing on the boardwalk without the risk of arrest. I hoped that the ACLU could contact Ocean City and work the problem out amicably and quickly, without the need for costly litigation, as they did when they represented me in 2009 in challenging Ocean City's amplification ban. But, although the ACLU contacted the City by letter, raising constitutional concerns about my treatment and the legality of the ordinance itself, Ocean City just ignored the matter, never responding at all to the ACLU. As a result, I have been forced to do something I have never before had to do in my long career as a street performer—file this legal action to protect my rights to free speech.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED: April 4, 2013.



William Hassay, Jr.

Subscribed and sworn to before me this 4 day of April, 2013.

Aaron M. Janice
NOTARY PUBLIC (Printed Name)

Aaron M. Janice
NOTARY PUBLIC (Signature)

My commission expires 1/24/2014.

EXHIBIT A



A PARTNERSHIP FOR A SAFE FAMILY VACATION

The Town of Ocean City working in partnership with the Downtown Association has teamed up to continue the tradition of a safe, family atmosphere on Ocean City's boardwalk. By keeping the community stakeholders informed, a working relationship can be cultivated which continues to allow a safe environment for millions of visitors who annually enjoy Ocean City's famous Promenade

THE NOISE ORDINANCE

Any person playing a musical instrument or operating a sound amplification device that can be heard at a distance of 30 feet (roughly the width of the boardwalk) or greater is in violation of the Noise Ordinance and is subject to a penalty of three months in jail and/or a \$500 fine. Any person who can be heard singing, yelling, hooting, hollering or whistling at a distance of 50 feet are subject to a penalty of three months in jail and/or a \$500 fine.

STREET PERFORMERS

Because Ocean City's boardwalk is such a great attraction, a host of performers materialize daily to put on shows, create balloon sculptures, draw caricatures, or just strum a guitar. The ordinances that strictly regulate such performances do not limit the performer's ability to provide entertainment, but are designed to provide for a safe and enjoyable experience for visitors. Street Performers cannot set up in an area that hampers visitors' ability to enter and exit stores, block pedestrian or vehicle traffic, or disturb the peace and quiet of the community.

- Street Performers are no longer required to register at City Hall. A Street Performer Permit is no longer required.
- Street Performers are not vetted by the Town of Ocean City
- Street Performers can only perform within the extended boundaries east of the street ends and cannot drift north or south of the street end area (See visual representation on back)
- Only portable chairs or tables can be used.
- Performers cannot perform within 10 feet of
 - Tables
 - Business entrances or exits
 - The Tram Lane
- Performers are prohibited from blocking
 - Pedestrian and vehicle traffic
 - Ramps
 - Stairways to the Beach
 - Entrance to comfort stations
 - The concrete pads on the east side of the boardwalk
 - Public Telephones
 - Trash receptacles
- Performances must be in compliance with the Noise Ordinance (30' Amplification, Musical Instruments / 50' Singing)
- Connecting to a municipal electrical outlet is not allowed
- Connecting to a private electrical outlet is only allowed with owner's permission
- The use of nudity, pornographic materials or obscenity in any display or performance is prohibited
- Performers shall not distribute any advertising or promotional material which promotes an activity, product or service other than that which the peddler, solicitor, hawker or street performer is engaged
- The use of animals (other than for legitimate ADA purposes), fire or other hazardous materials in a display or performance is prohibited
- The North Division Street boardwalk area (Boardwalk Arch) has been designated a no street performer area

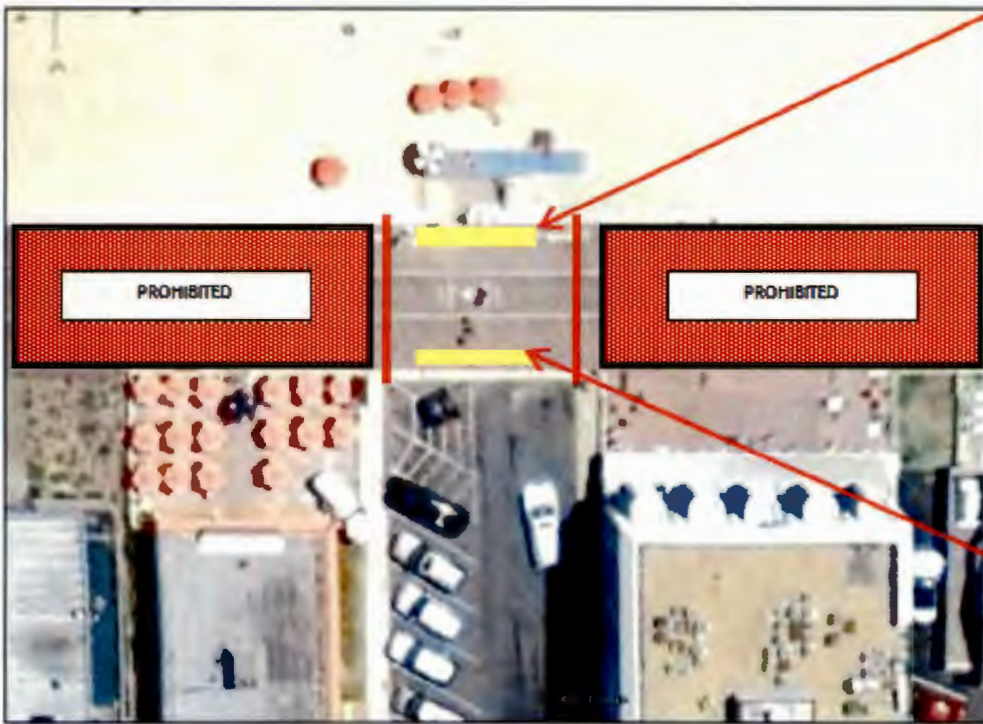
COMMERCE ON THE BOARDWALK

The sale of products on the boardwalk is strictly prohibited except for items that have been created, written or composed by the person who sells rents or exchanges them for a donation

STREET PERFORMERS DESIGNATED LOCATIONS

STREET PERFORMERS ARE NOT ALLOWED IN THE NORTH DIVISION STREET AREA

Street Performers can only perform within the extended boundaries east of the street ends and cannot drift north or south of the street end area



The Yellow area represents the permissible areas for street performers. Performers must be a distance of 10 feet from the tram lane

A PARTNERSHIP FOR A SAFE FAMILY VACATION



ANY BUSINESS OWNER OR STREET PERFORMER WHO HAS ORDINANCE QUESTIONS SHOULD REQUEST AN OCEANCITY POLICE SUPERVISOR FOR CLARIFICATION