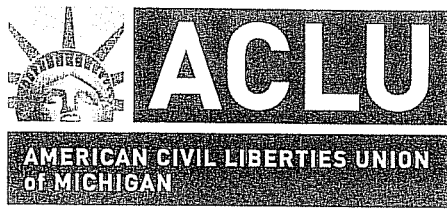


Exhibit D

Letter to Mills 9/19/11



State Headquarters  
2966 Woodward Avenue  
Detroit, MI 48201-3035  
Phone 313.578.6800  
Fax 313.578.6811  
Email [aclu@aclumich.org](mailto:aclu@aclumich.org)  
[www.aclumich.org](http://www.aclumich.org)

Legislative Office  
P. O. Box 18022  
Lansing, MI 48901-8022  
Phone 517.372.8503  
Fax 517.372.5121  
Email [lansing@aclumich.org](mailto:lansing@aclumich.org)  
[www.aclumich.org](http://www.aclumich.org)

West Michigan Regional Office  
89 Ionia NW, Suite 300  
Grand Rapids, MI 49503  
Phone 616.301.0930  
Fax 616.456.1450  
Email [aclu@aclumich.org](mailto:aclu@aclumich.org)  
[www.aclumich.org](http://www.aclumich.org)

September 19, 2011

Jane Kent Mills  
City of Detroit Law Department  
660 Woodward Ave., Suite 1650  
Detroit, MI 48226-3535

By First Class Mail and  
Faxed to (313) 224-5505

Re: Letten v. Hall and Anderson v. Peoples

Dear Ms. Mills:

Thank you for your recent letter with the releases, affidavits, and proposed orders. There are several corrections that need to be made before the releases can be signed.

When we met in Judge Cohn's chambers on May 17, 2011, we agreed on several changes to the release. A copy of those changes, in your handwriting and with your initials, is enclosed. Those changes are as follows:

1. "the promises contained within the settlement agreement attached hereto" must be inserted to reflect that Mr. Letten and Mr. Anderson are releasing the City of Detroit and its defendant officers from liability in exchange for a monetary payment *plus* the policy and training agreement.
2. "or accruing at any time prior to and through the date of this Release, which Plaintiff has or may have against Defendant, including without limitation any and all claims related to or arising" must be deleted.

In addition, Mr. Letten's name is misspelled "Letter" throughout (probably as a result of spell-check's auto-correct function). You may wish to correct this typographical error.

Finally, we also agreed to a final version of the Settlement Agreement in Judge Cohn's chambers. A copy of the agreement is enclosed, along with the copy that has your handwritten notes reflecting your agreement to the final version. This agreement must be attached to all copies of the release that Mr. Letten and Mr. Anderson sign. I will expect that when their signed releases are returned to you, you will sign the Settlement Agreement on behalf of the City and the defendant officers. After you do so, I will sign a stipulation to dismiss the case.

If you have any questions or concerns, please call me. Otherwise please prepare a revised release that I may forward to my clients for their signature and notarization.

Very truly yours,

Daniel S. Korobkin

D 6 a S I

**RELEASE**

(with Medicare Affidavit)

Matter No: **A37000**

Case. No: **2:10-cv-12182**

*the promise contained within the settled Agreement attached hereto;*

**PHILLIP LETTEN AND KEN ANDERSON** (hereinafter "Plaintiff") in consideration of the sum of **Twenty Thousand Dollars and No Cents (\$20,000.00)**; an executed stipulation for the entry of an order dismissing the underlying civil action identified herein; and, an executed Medicare Reporting and Indemnification Affidavit, hereby releases the **City of Detroit**, a Michigan municipal corporation, and each officer, employee, agent and representative (hereinafter collectively the "Defendant") from any and all liability, actions or claims, legal and equitable, known and unknown, arising or accruing at any time prior to and through the date of this Release, which Plaintiff has or may have against Defendant, including without limitation any and all claims related to or arising out of the events, transactions, and occurrences which are or could have been complained of in the civil action, referenced above entitled **Phillip Letten v Scott Hall and Ken Anderson v. LaShawn Peoples**.

Plaintiff understands that the payment to be made under this Release represents the compromise of a disputed claim and payment is not be construed as an admission of liability on the part of Defendant.

As used in this Release, the term "Plaintiff" includes each and every servant, agent, contractor, attorney, employee, representative, family member, heir, related corporation, subsidiary, division, affiliate, director, and officer of Plaintiff, if any.

**THIS RELEASE** and the attached Medicare Reporting and Indemnification Affidavit, which by this reference is made a part hereof, constitute the entire understanding between Plaintiff and Defendant. The provisions of this Release and said attachment are binding upon the respective heirs, affiliates, executors, administrators, and successors of the Plaintiff forever.

The parties hereto acknowledge that receipt of the aforementioned sum is conditioned upon the approval of the Detroit City Council. Said parties understand that the Law Department will make reasonable efforts to achieve City Council approval and, subsequently, to promptly process an application for payment. Nevertheless, because these procedures take time (normally forty-five (45) - ninety (90) days) it is hereby acknowledged that Time is not of the Essence and no day certain for the issuance of any check can be given.



## Settlement Agreement

1. This Settlement Agreement and Release (“Agreement”) is made the \_\_\_\_ day of \_\_\_\_\_, 2011 by and between Phillip Letten, Ken Anderson, the American Civil Liberties Union Fund of Michigan (“ACLU Fund of Michigan”), Officer Scott Hall, Officer LaShawn Peoples, and the City of Detroit (“the City”) (collectively, the “Parties”).
2. This Agreement fully and completely resolves *Letten v. Hall* (Case No. 10-cv-12182) and *Anderson v. Peoples* (Case No. 10-cv-12183), two civil actions filed by Phillip Letten and Ken Anderson on June 2, 2010, in the United States District Court for the Eastern District of Michigan, Southern Division, which are now consolidated as a single case, *Letten v. Hall* (Case No. 10-cv-12182) (“this Action”).
3. Attorney Daniel S. Korobkin is authorized to sign this Agreement on behalf of Phillip Letten, Ken Anderson, and the ACLU Fund of Michigan, and Jane K. Mills is authorized to sign this Agreement on behalf of Officer Scott Hall, Officer LaShawn Peoples, and the City.
4. Phillip Letten agrees, on behalf of himself, agents, family members, friends, partners, associates, attorneys, heirs and assigns, to release Officer Hall, the City, and all other employees and agents of the City from any and all claims, demands, damages, actions, causes of action, suits or injuries of any kind or nature whatsoever, known or unknown, to person, property or otherwise, which have resulted or may in the future arise out of his encounter with Officer Hall on July 31, 2009, including but not limited to those damages alleged in this Action.
5. Ken Anderson agrees, on behalf of himself, agents, family members, friends, partners, associates, attorneys, heirs and assigns, to release Officer Peoples, the John Doe police officer named as Officer Peoples’ co-defendant, the City, and all other employees and agents of the City from any and all claims, demands, damages, actions, causes of action, suits or injuries of any kind or nature whatsoever, known or unknown, to person, property or otherwise, which have resulted or may in the future arise out of his encounter with Officer Peoples and the John Doe defendant on November 12, 2008, including but not limited to those damages alleged in this Action.
6. The City agrees to adopt “Training Directive – First Amendment Right to Distribute Non-Commercial Pamphlets and Handbills” (“First Amendment Training Directive”), attached as Exhibit 1.
7. The City agrees to distribute copies of the First Amendment Training Directive to all members of the Detroit Police Department (“Department”) via an A-Distribution within 30 days of this Agreement.

8. The City agrees that the First Amendment Training Directive shall be read aloud to every Department shift for a span of one week during roll call as an Administrative Message/Teletype within 30 days of this Agreement, and then again to every shift for a span of one week 6 months after the first reading.
9. The City agrees to adopt “Training Directive – Retaliation” (“Retaliation Training Directive”), attached as Exhibit 2.
10. The City agrees to distribute copies of the Retaliation Training Directive to all members of the Department via an A-Distribution within 30 days of this Agreement.
11. The City agrees that the Retaliation Training Directive shall be read aloud to every Department shift for a span of one week during roll call as an Administrative Message/Teletype within 30 days of this Agreement, and then again to every shift for a span of one week 6 months after the first reading.
12. The City agrees to adopt “Training Directive – Loitering” (“Loitering Training Directive”), attached as Exhibit 3.
13. The City agrees to distribute copies of the Loitering Training Directive to all members of the Department via an A-Distribution within 30 days of this Agreement.
14. The City agrees that the Loitering Training Directive shall be read aloud to every Department shift for a span of one week during roll call as an Administrative Message/Teletype within 30 days of this Agreement, and then again to every shift for a span of one week 6 months after the first reading.
15. The City agrees to place a direct link to its online citizen complaint form on the main page of the Department’s website within 30 days of this Agreement.
16. The City agrees to ensure that posters explaining its citizen complaint form are on public display in the lobby and/or entrance of every precinct station and at the Department headquarters within 30 days of this Agreement.
17. The City agrees to ensure that printed brochures explaining its citizen complaint form are placed in racks and/or display areas at every precinct station and at the Department headquarters within 30 days of this Agreement. This Agreement does not require the City to create racks and/or display areas where none exist.
18. The City agrees that a citizen may file a citizen complaint form even if there are charges pending against him or her.
19. The City agrees to distribute a written statement regarding paragraph 18 to all members of the Department via an A-Distribution within 30 days of this Agreement.

20. The City agrees that this statement regarding paragraph 18 shall be read aloud to every Department shift for a span of one week during roll call as an Administrative Message/Teletype within 30 days of this Agreement.
21. The City shall pay the total amount of \$ 20,000.00 to Phillip Letten, Ken Anderson, and their counsel at the ACLU Fund of Michigan.
22. The Parties agree to the form and content of the proposed order dismissing this Action, attached as Exhibit 4. The proposed order shall be filed upon execution of this Agreement.

Signed and agreed to by:

\_\_\_\_\_  
Jane K. Mills  
City of Detroit Law Department  
660 Woodward Ave., Ste. 1650  
Detroit, MI 48226

DATE: \_\_\_\_\_

\_\_\_\_\_  
Daniel S. Korobkin  
ACLU Fund of Michigan  
2966 Woodward Ave.  
Detroit, MI 48201

DATE: \_\_\_\_\_

## **Exhibit 1**

### **First Amendment Training Directive**





# Detroit Police Department Training Directive

Numbered Directives shall  
be retained by all members  
Number: ~~10-01~~  
Date: ~~11/0/10~~

## SUBJECT: FIRST AMENDMENT RIGHT TO DISTRIBUTE NON-COMMERCIAL PAMPHLETS AND HANDBILLS

This Training Directive is intended to remind members of the department that the First Amendment protects the right of persons in public places to distribute non-commercial handbills and pamphlets. No permit or license is required and there are no statutes or ordinances that limit an individual's right to do so.

Detroit City Code Section 3-2-1 does **not** apply to non-commercial handbills, circulars, pamphlets or other written material. Section 3-2-1 states:

- a. It shall be unlawful for any person to distribute or cause to be distributed any **commercial** handbills, circulars or advertising cards that solicit patronage for goods, wares, merchandise, services, real estate or any other thing within the Loop or Loop District, which is defined in Section 1-1-2 of this Code as the area bounded on the south by the south line of East Jefferson Avenue and West Jefferson Avenue; on the east by the east line of St. Antoine; on the north by the north line of Columbia Street; and on the west by the west line of First Street.
- b. The provisions of this section **shall not apply to** established newspapers or periodicals **or to noncommercial** circulars, handbills, or cards which do not solicit patronage for profit.

Furthermore, there is no permit or license required to distribute noncommercial handbills or pamphlets.

The First Amendment to the United States Constitution protects, among other things, the right of freedom speech and expression. The United States Supreme Court has repeatedly made it clear that this constitutional right includes written as well as verbal expression. It is of the utmost importance that members understand -- and act in accordance with that understanding -- that the First Amendment protects a freedom of expression without regard to the content of the message or whether an officer or others find it offensive, contemptuous or objectionable.

Questions can be directed to the Police Legal Advisor at 596-2151.

**Exhibit 2**

**Retaliation Training Directive**

**SUBJECT: RETALIATION**

The First Amendment protects the rights of individuals to verbally oppose, verbally criticize, or verbally question police action without thereby risking arrest or a citation. Although the First Amendment does not protect the right to physically obstruct a police officer or refuse to comply with a lawful police order, verbally opposing, criticizing or questioning police action does not constitute physical obstruction or resistance. These expressions are not criminal and cannot be punished constitutionally.

An individual has the right to question the basis for a police stop, ask for the ordinance underlying a police stop, and express his displeasure with a police stop. This protection extends to expletives and other language that an officer may find annoying or provocative. In the face of such verbal challenges, an officer must exercise a higher degree of restraint than the average citizen.

It is unlawful to arrest or ticket an individual for speech that verbally opposes or verbally questions police action. It is similarly unlawful to retaliate against an individual who verbally opposes or verbally questions police action by arresting or ticketing them for another offense. An officer cannot arrest such an individual for another offense unless the same action would have been taken even in the absence of the speech.

This directive is constitutionally required. It also is in keeping with our Law Enforcement Code of Ethics, in which every officer pledges "to maintain courageous calm in the face of danger, scorn or ridicule; develop self restraint and be constantly mindful of the welfare of others."

**Exhibit 3**

**Loitering Training Directive**

**SUBJECT: LOITERING**

Members of the department are reminded that "loitering," by itself, is not a crime, and cannot be the basis for an arrest or an investigative stop.

The Constitution protects the right to loiter or remain in a public place for an innocent purpose, or for no purpose at all. Loitering is not a crime in itself and cannot be punished constitutionally. Merely being present in an area where illegal activity is taking place or tends to take place is not illegal.

Section 38-1-3 of the Detroit City Code provides:

It shall be unlawful for any person to loiter on any street, sidewalks, overpass or public place. For the purpose of this section, loitering is defined as the act of standing or idling in or about any street, sidewalk, overpass or public place ***so as to hinder or impede or tend to hinder or impede the passage of pedestrians or vehicles.***

No violation of section 38-1-3 occurs unless the person is engaged in conduct that hinders or impedes, or tends to hinder or impede, pedestrian or vehicle traffic. The act of standing or idling in or about a public place is not, by itself, a loitering offense.

Section 38-11-6 of the Detroit City Code provides:

A person shall not ***knowingly remain*** in any building, apartment, store, automobile, boat, boathouse, airplane, or any other place where any controlled substance is illegally sold, dispensed, furnished, given away, stored, or kept ***with the intent to unlawfully use or possess such controlled substance.***

No violation of section 38-11-6 occurs unless the person knows of a drug offense in that place *and* intends to commit a drug offense. Merely being present in a place where a drug offense occurs is not illegal.

Because loitering by itself is not a criminal offense, it does not give rise to the "reasonable suspicion" required to justify an investigatory stop. The reasonable suspicion standard is not satisfied merely by loitering in a high-crime area or near a place where illegal activity occurs. To justify an investigatory stop for loitering, there must be reasonable suspicion of unlawful conduct, purpose, or intent on the part of the person being stopped.

**Exhibit 4**

**Stipulated Order of Voluntary Dismissal**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PHILLIP LETTEN, et al.,

Plaintiffs,

vs.

SCOTT HALL, et al.,

Defendants.

Hon. Avern Cohn

Case No. 10-cv-12182

\_\_\_\_\_/

**STIPULATED ORDER OF VOLUNTARY DISMISSAL**

A settlement having been reached in this matter, and the parties having stipulated to this order by and through counsel, it is hereby ORDERED that this case is DISMISSED WITH PREJUDICE.

Dated:

/s/ \_\_\_\_\_  
Hon. Avern Cohn  
United States District Judge

Stipulated to by:

/s/ \_\_\_\_\_  
Jessie J. Rossman  
Daniel S. Korobkin

/s/ \_\_\_\_\_  
Jane K. Mills

Counsel for Plaintiffs

Counsel for Defendants

Dated:

Dated:

copy  
COD (initials)  
5/14/10 JS  
Huy

Settlement Agreement and Release

1. This Settlement Agreement and Release ("Agreement") is made the \_\_\_\_ day of \_\_\_\_\_, 2011 by and between Phillip Letten, Ken Anderson, the American Civil Liberties Union Fund of Michigan ("ACLU Fund of Michigan"), Officer Scott Hall, Officer LaShawn Peoples, and the City of Detroit ("the City") (collectively, the "Parties").
2. This Agreement fully and completely resolves *Letten v. Hall* (Case No. 10-cv-12182) and *Anderson v. Peoples* (Case No. 10-cv-12183), two civil actions filed by Phillip Letten and Ken Anderson on June 2, 2010, in the United States District Court for the Eastern District of Michigan, Southern Division, which are now consolidated as a single case, *Letten v. Hall* (Case No. 10-cv-12182) ("this Action").
3. Attorneys Daniel S. Korobkin and ~~Jessie J. Rossman~~<sup>15</sup> are authorized to sign this Agreement on behalf of Phillip Letten, Ken Anderson, and the ACLU Fund of Michigan, and Jane K. Mills is authorized to sign this Agreement on behalf of Officer Scott Hall, Officer LaShawn Peoples, and the City.
4. Phillip Letten agrees, on behalf of himself, agents, family members, friends, partners, associates, attorneys, heirs and assigns, to release Officer Hall, the City, and all other employees and agents of the City from any and all claims, demands, damages, actions, causes of action, suits or injuries of any kind or nature whatsoever, known or unknown, to person, property or otherwise, which have resulted or may in the future arise out of his encounter with Officer Hall on July 31, 2009, including but not limited to those damages alleged in this Action.
5. Ken Anderson agrees, on behalf of himself, agents, family members, friends, partners, associates, attorneys, heirs and assigns, to release Officer Peoples, the John Doe police officer named as Officer Peoples' co-defendant, the City, and all other employees and agents of the City from any and all claims, demands, damages, actions, causes of action, suits or injuries of any kind or nature whatsoever, known or unknown, to person, property or otherwise, which have resulted or may in the future arise out of his encounter with Officer Peoples and the John Doe defendant on November 12, 2008, including but not limited to those damages alleged in this Action.
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18. The City agrees that a citizen may file a citizen complaint form even if there are charges pending against him or her.
19. The City agrees to distribute a written statement <sup>re proposed by</sup> ~~to this effect~~ to all members of the Department via an A-Distribution within 30 days of this Agreement.

