

JF

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1

INTERNATIONAL ACTION CENTER,

Plaintiff,

CIVIL ACTION NO. 01cv22217

v.

THE CITY OF PHILADELPHIA,
JOHN STREET, sued in his official
capacity as Mayor of the City of
Philadelphia, and JOSEPH MARTZ, sued
in his official capacity as Managing
Director of the City of Philadelphia,

Defendants.

FILED

MAY - 7 2001

By MICHAEL E. KUNZ, Clerk
Dep. Clerk

VERIFIED COMPLAINT

INTRODUCTION

Plaintiff, an organization dedicated among other things to publicizing the wrongful conviction and incarceration of Mumia Abu-Jamal, seeks the assistance of this Court to reverse the City of Philadelphia's refusal to grant it a permit permitting a 48-hour vigil, beginning Friday, May 11, 2001, in the area adjacent to City Hall, the site in which Abu-Jamal was tried. The City's offer of truncated hours completely undermines the nature of the expressive activities plaintiff intends. The City's refusal to permit round-the-clock vigiling therefore constitutes a violation of plaintiff's freedom of expression as is guaranteed by the First Amendment of the United States Constitution. Additionally, the City's lack of specific regulations governing both the use of the skirt of City Hall and which narrowly tailors municipal decision-making authority regarding the permitting process further violates constitutional rights guaranteed plaintiff by the First Amendment. Given the imminence of the event plaintiff has widely publicized, preliminary injunctive relief is sought.

JURISDICTION

1. As plaintiff seeks to vindicate rights protected by the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. Section 1983, the Court has jurisdiction of this civil action pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3) and (4). Pursuant to 28 U.S.C. Sections 2201 and 2202 this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

PARTIES

2. Plaintiff, the INTERNATIONAL ACTION CENTER, is an organization founded by former United States Attorney General Ramsey Clark, dedicated to changing the direction of this nation both domestically and internationally. It seeks to promote peace, solidarity and truth. Among its many causes, it spearheads the effort to overturn the wrongful conviction and incarceration of Mumia Abu-Jamal. It is headquartered at 39 West 14th Street, Room 206, New York, NY, 10011. It is co-directed by Sara Flounders, Larry Holmes and Brian Becker and is also represented in Philadelphia by Dr. Berta. Joubert.

3. Defendant, CITY OF PHILADELPHIA, is an incorporated municipality of the Commonwealth of Pennsylvania which may be served by delivering process to Kenneth Trujillo, City Solicitor, whose office is located at City Law Department, One Parkway, 1515 Arch Street, Philadelphia, PA, 19102-1595.

4. Defendant, JOHN STREET, is sued in his official capacity as Mayor of the City of Philadelphia. As such, he bears ultimate executive authority for decisions undertaken within the City. Mayor Street may be served by delivering process to Kenneth Trujillo, City Solicitor, whose office is located at City Law Department, One Parkway, 1515 Arch Street, Philadelphia, PA, 19102-

1595.

5. Defendant, JOSEPH MARTZ, is sued in his official capacity as Managing Director of the City of Philadelphia, in which capacity he oversees the granting of special events, parade and political demonstration permits. Managing Director Martz may be served by delivering process to Kenneth Trujillo, City Solicitor, whose office is located at City Law Department, One Parkway, 1515 Arch Street, Philadelphia, PA, 19102-1595.

FACTS

6. On behalf of its members and in solidarity with numerous other organizations, all dedicated to reversing the wrongful conviction and incarceration of Mumia Abu-Jamal, plaintiff's Co-Director Sara Flounders, on March 29, 2001, filed an application for a Special Events Permit in order to hold a 48-hour vigil in support of Mumia Abu-Jamal. The permit requested permission to utilize the west side skirt of City Hall, from noon Friday, May 11, through 6:00 PM Sunday, May 13, 2001. The actual vigiling will begin at 6:00 PM on Friday, the preceding hours are needed for construction of a stage and other set-up activities. A copy of this application is appended hereinafter.

7. Plaintiff seeks to convey the depth of the outrage which is felt by its members and supporters at the wrongful conviction, incarceration, and impending execution of Mumia Abu-Jamal by undertaking an around-the-clock vigil in a symbolic encampment throughout the weekend which has been designated by Abu-Jamal supporters as an international call for witness and action.

8. This vigil and protest will begin with a concert and political program Friday evening, and will continue with panel discussions, a rally on Saturday during the day, and conclude on Sunday with a protest commemorating the 16th anniversary of the Philadelphia authorities' bombing of MOVE.

9. When plaintiff sought to coordinate this First Amendment protected protest with defendants, it was directed to fill out a "special events" permit, and given a copy of the defendants' "Special Events Policy Overview," which among other things, informed plaintiff that it could be liable for substantial costs including of any additional personnel including police officers.

10. On the day of filing plaintiff's application, Ms. Flounders met with Gloria Jackson, an Assistant Deputy in the Managing Director's Office, to discuss the proposed vigil.

11. At that time, Ms. Jackson requested evidence of a one million dollar insurance bond.

12. Plaintiff subsequently supplied the City of Philadelphia with such a bond, a copy of which is annexed hereinafter.

13. Ms. Jackson told Ms. Flounders that she should not bother filling out the rest of the application, once Ms. Flounders had indicated the nature of the demonstration.

14. On April 2, Ms. Jackson telephonically informed Ms. Flounders that the City would grant a permit which would permit plaintiff to vigil through one, but not both, nights. Indeed, Ms. Jackson stated plaintiff could choose either Friday or Saturday as the vigiling night.

15. Plaintiff objected to this limitation of its expressive activities.

16. Notwithstanding plaintiff's objection, throughout the early part of April, plaintiff's staff repeatedly left telephonic messages for Ms. Jackson in an effort to work through the remaining aspects of the event.

17. While most of those calls were not returned, Ms. Jackson finally offered to meet with plaintiff on April 26, 2001.

18. On April 26, plaintiff, through its Co-Director and staff, accompanied by undersigned counsel, arrived at the Managing Director's office at the agreed upon time.

19. Upon walking in to the meeting, however, plaintiff's representatives were told that City officials needed to continue conducting a pre-meeting at which various high-ranking officials of the Philadelphia Police Department were in attendance.

20. It was only after most of the Police officials left the room that plaintiff's representatives were permitted entree.

21. At that time, Deputy Managing Director Debora Russo Haines informed plaintiff's representatives that the City would not in fact grant a permit for an event which would span either night. Rather, the City would only permit the use of Dilworth Plaza requested on the following hours: Friday, May 11 from 6:30 PM to 9:00 PM, Saturday, May 12, from 6:00 AM to 6:00 PM, and Sunday, May 13, from 6:00 AM to 6:00 PM.

22. These hours make it impossible for plaintiff to erect the stage in time for the speakers and musicians who plaintiff has publicized as being in attendance on the evening of Friday, May 11. The stage will be needed throughout the weekend.

23. Additionally, these hours completely eviscerate the round-the-clock aspect which plaintiff deems essential to the message it wishes to convey about the importance of challenging the impending execution of Mumia Abu-Jamal.

24. In response to a request for an explanation as to why the City would not permit round-the-clock vigiling, the following were provided:

- i. The City had never permitted nighttime usage of Dilworth Plaza, and,
- ii. Because of the number of pigeons in the area and their excrement, use of Dilworth Plaza for an overnight vigil would cause an unspecified health hazard.

25. Both of these explanations serve as a subterfuge covering the content-based animus which City officials bear towards plaintiff's cause.

26. Defendant City of Philadelphia has a long history of impeding the First Amendment rights of politically disfavored entities. Thus, for example, as a result of impermissible actions on the part of the City, it remains under a permanent injunction entered on November 25, 1988, by the Honorable John P. Fullam in *Pledge of Resistance v. We the People 200*, Civil Action No. 87-3975, that was issued to remedy First Amendment violations by the Philadelphia Police Department during the Bicentennial Celebration. Additionally, just last year, federal litigation was required to secure access to the streets for those wishing to disseminate a message differing from that espoused by the Republican National Convention.

27. The City's first asserted reason is demonstrably false. Just last summer the City granted the Republican National Committee the right to erect tents in Dilworth Plaza and the other public areas surrounding City Hall.

28. As to the second, it seems highly improbable that the area surrounding City Hall is cleaned on a daily basis. Yet even if true, plaintiff (which is obviously concerned about the health of its supporters) is certainly willing to work with City officials in order to avoid any health hazard.

29. Finally, at this meeting, city officials articulated a number of other enormously burdensome requirements concerning who might erect any necessary stages and/or provide meals, none of which have ever been articulated before in the face of other gatherings supporting Abu-Jamal's cause.

30. Defendants have at no time provided any reference to code, regulation, or policy which mandates their determination.

31. Defendants currently employ a licensing scheme for First Amendment protected activities that imposes prior restraint on such activities and allows decision makers to act with unbridled discretion in the granting or denial of permits.

32. Defendants have promulgated no narrowly tailored time, place or manner restrictions on the use of public space for First Amendment protected activities.

33. Defendants make determinations as to the granting or denial of permits without uniformity based on the favored status of the applicant.

34. The foregoing restrictions make it impossible for plaintiff to convey the message it has publicized. Unless this Court intervenes, plaintiff has no adequate remedy of law to protect its constitutional rights.

CAUSE OF ACTION

35. In denying or refusing to grant plaintiff its permit which would permit a 48-hour vigil in Dilworth Plaza, defendants violated and continue to violate plaintiff's First Amendment rights to freedom of speech, freedom of association and freedom to petition the government for redress of grievances, which rights are guaranteed by the Fourteenth Amendment and for which remedies are provided by 42 U.S.C. § 1983.

36. In denying or refusing to grant plaintiff its permit which would permit nighttime usage of Dilworth Plaza when others have been granted such usage, defendants have engaged in content-based discrimination in violation of plaintiff's First Amendment rights to freedom of speech, freedom of association and freedom to petition the government for redress of grievances, which rights are guaranteed by the Fourteenth Amendment and for which remedies are provided by 42 U.S.C. § 1983.

37. Defendants are employing a facially unconstitutional licensing scheme that provides for standardless discretion by decision makers in their determinations in violation of requirements emanating from plaintiff's First Amendment rights to freedom of speech, freedom of association and freedom to petition the government for redress of grievances, which rights are guaranteed by the Fourteenth Amendment and for which remedies are provided by 42 U.S.C. § 1983.

RELIEF

Based on the foregoing, Plaintiff respectfully prays that this Court will:

A. Declare that Defendant's permitting scheme violates the First and Fourteenth Amendments to the Constitution, and that it violates the *Pledge of Resistance* Permanent Injunction;

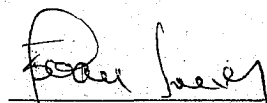
B. Grant Plaintiff preliminary and permanent injunctive relief requiring Defendants, their subordinates, employees, agents and those acting in concert with them to immediately approve Plaintiffs' application for use of Dilworth Plaza beginning on May 11 at noon and ending at 6:00 PM on May 13, 2001;

C. Grant Plaintiff preliminary and permanent injunctive relief enjoining Defendants from placing any restrictions on Plaintiff's use of Dilworth Plaza not placed uniformly on other permittees;

D. Grant Plaintiff preliminary and permanent injunctive relief enjoining Defendants from requiring persons who seek to engage in constitutionally protected activity on public space to submit permit applications through Defendants' Special Events Policy and from placing obligations and requirements identified in its Special Events Policies on such persons;

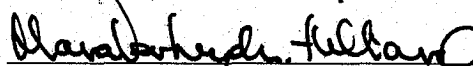
E. Grant Plaintiffs such other relief as this Court deems just and proper; and

F. Award Plaintiffs reasonable attorney's fees and costs.



Stefan Presser, Esq.
PA Attorney No. 43067
Legal Director
American Civil Liberties Union of
Pennsylvania
125 South Ninth St., Suite 701
Philadelphia, PA 19107
(215) 592-1513

Respectfully Submitted,



Mara Verheyden-Hilliard
Partnership for Civil Justice, Inc.
1901 Pennsylvania Avenue, N.W.
Washington, D.C., 20006
(202) 530-5630

ATTORNEYS FOR PLAINTIFF