IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **08-cv-_____-___-___**

AMERICAN CIVIL LIBERTIES UNION OF COLORADO, et al.
Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO, et al.,
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' FIRST MOTION FOR PRELIMINARY INJUNCTION

Steven D. Zansberg
Christopher P. Beall
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
1888 Sherman Street, Suite 370
Denver, Colorado 80203
(303) 376-2400
In cooperation with the American Civil Liberties Union Foundation of Colorado

Mark Silverstein
Taylor Pendergrass
ACLU FOUNDATION OF COLORADO
400 Corona Street
Denver, Colorado 80218
(303) 777-5482

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Plaintiffs American Civil Liberties Union of Colorado, *et al.*, by and through their attorneys, pursuant to Fed. R. Civ. P. 65(b) and 28 U.S.C. § 1651, submit this memorandum in support of their Motion For Preliminary Injunction ("Motion"), and state as follows:

INTRODUCTION

> In the future, if the representatives of demonstrators ask the courts to modify security measures developed over many months of planning for an event of this magnitude, they should come to court ***when there is enough time*** for the courts to assess fully the impact that modifications will have on the security concerns advanced. Inevitably, the absence of time becomes an important element in determining whether a given time-place-manner restriction is narrowly tailored to serve a government interest in maintaining security.

Bl(a)ck Tea Soc'y v. City of Boston, 378 F.3d 8, 16 (1st Cir. 2004) (Lipez, J., concurring) (emphasis added).

The 2008 Democratic National Convention at the Pepsi Center in Denver is now less than 120 days away.

Planning for the Democratic National Convention ("DNC" or "Convention") has been underway for more than fifteen months, since Denver's selection in January 2007. Indeed, long before the DNC was declared to be a "National Special Security Event" under 18 U.S.C. § 3056(e)(1) and an "Extraordinary Event" under Denver Rev. Mun. Code § 39-86, hundreds (if not thousands) of federal, state and municipal workers, and thousands of volunteers have been planning and implementing plans to put on an event of this magnitude, with millions of dollars already expended and tens of millions more soon to follow.

Yet, despite months of efforts by the Plaintiffs to reach out to City officials, beginning with meetings in May 2007, to discuss and negotiate plans for free speech activities during the Convention, one remarkable fact is clear: ***Not one permit application for a peaceful march at the Convention has yet been processed***. Despite their having fully complied with the City's newly minted regime to request permits for "parades," none of the Plaintiffs has yet to receive a permit to exercise their constitutional rights of expression and assembly at or around the Convention. Nor has the United States Secret Service ("Secret Service") or the City and County of Denver ("City") disclosed any information regarding the restrictions they will impose on the time, place and manner of assemblies at or near the Pepsi Center.

As demonstrated by the sworn Declarations accompanying this Motion, the City's refusal to issue "parade" permits and to disclose its plans for non-marching demonstrations "within sight and sound" of the Pepsi Center, and the actual Delegates, has effectively thwarted all efforts by the Plaintiffs to assure themselves of the right to peacefully assemble, to pamphleteer, and to speak out at and around the Convention. In public forums and in private meetings with some of the Plaintiffs, the Municipal Defendants have insisted that that they cannot reveal to the public, or to the peaceful dissenters who have timely and properly filed "requests" for parades, what restrictions the government intends to impose on these citizens' fundamental liberties. As a result, the Plaintiffs are completely stymied in their efforts to plan, prepare, organize, fundraise for, publicize, and implement the many activities they wish to conduct in order to communicate their views to the Delegates and others at the Convention.

Moreover, the Defendants' continued refusal to process pending permit requests and to disclose the planned restrictions on free speech and assembly, if left unchallenged, will prevent any meaningful judicial review of, or relief from, the anticipated unconstitutional restrictions.

This abridgement of core, political speech and assembly at the quadrennial convention of a national political party – which will select its candidate for President and adopt a national platform that may guide the next Administration – makes a mockery of the First Amendment of the U.S. Constitution and of Article II, section 10 of the Colorado Constitution. The Court must put an end to it. ***Now***. Each passing day deprives these Plaintiffs of the opportunity to take the steps necessary to assemble a chorus of voices and congregation of supporters to join together to express their message forcefully, and always, peacefully, to the Convention attendees and the national and local news media.

In recognition of Circuit Judge Kermit V. Lipez's admonition quoted above, in the aftermath of the last Democratic National Convention held in Boston just four years ago, this Court must take appropriate action now, just a few months before the Convention is to begin, to ensure that all plans and anticipated regulations affecting the exercise of free speech and assembly rights in the public forums of the City and County of Denver are subjected to meaningful *de novo* judicial review, as is required by the constitutions of both this nation and Colorado. In this Motion, Plaintiffs ask this Court to issue interim injunctive relief that is "necessary or appropriate in aid of [its] respective jurisdiction" to ensure the opportunity for this Court's independent review of government restrictions on the exercise of fundamental constitutional rights. *See* 28 U.S.C. § 1651(a).

In sum, the Court should enter the Preliminary Injunction sought herein to assure that the "symbolic affront to the role of free expression" that occurred at the Democratic National Convention in Boston four years ago is not repeated here. *See Coal. to Protest the Democratic Nat'l Convention v. City of Boston*, 327 F. Supp. 2d 61, 75 (D. Mass.), *aff'd sub nom., Bl(a)ck Tea Soc'y v. City of Boston*, 378 F.3d 8 (1st Cir. 2004).

PROCEDURAL POSTURE OF MOTION

Because of the exigencies of the circumstances here, with the date of the Convention so soon upon all parties, expedited consideration of this motion is absolutely necessary; otherwise there will be no time available to develop a full factual record to inform the Court's decision. As requested in the accompanying Motion For Expedited Briefing, Plaintiffs believe this Motion should be considered as soon as is feasible, even if that means the parties engage in expedited briefing and limited discovery prior to the normal time for a response from the Defendants to the underlying Complaint.

Importantly, the interim relief requested in this Motion is ***not*** the ultimate relief that the Plaintiffs seek in this action. Instead, the Plaintiffs reserve for a later day the Court's substantive analysis of the specific restrictions and limitations to be imposed by the Defendants on citizens who wish to assemble and peacefully express themselves at and around the Convention. That later consideration, or "second phase" of this litigation, can occur only after the Defendants do what is requested herein, which is to publicly announce and implement the various restrictions they intend to impose on parades and assemblies at and around the Convention.

FACTUAL BACKGROUND

The factual background for this Motion is laid out in the concurrently filed Complaint For Injunctive Relief ("Complaint"), with its accompanying exhibits, and the eleven (11) separate declarations from representatives of the Plaintiffs that are attached hereto, all of which are incorporated by reference.[1]

As is apparent from the Complaint and the declaration from Recreate 68's Glenn Spagnuolo, representatives of the Plaintiffs began meeting with City officials, and later Secret Service officials, almost a full year ago, all in an effort to head off the need for the very litigation that is now before the Court. (*See* Complaint, ¶¶ 24-28; Spagnuolo Decl., ¶ 8.) In those meetings, beginning on May 23, 2007, representatives of Recreate 68 and the ACLU pressed the City for assurances that there would be timely disclosures of the City's plans for permits for marches to the Convention site, and elsewhere in the city, and for assemblies and other rallies at the Convention site, both in the so-called "demonstration zone," and outside the so-called "soft-security perimeter." (Spagnuolo Decl., ¶ 8.) These efforts were explicitly premised on the likelihood that any restrictions on speech and assembly that are to be imposed on citizens'

[1] Those accompanying declarations are as follows:

(1) Declaration of Betty Ball, on behalf of Rocky Mountain Peace & Justice Center;
(2) Declaration of Leslie Cagan, on behalf of United for Peace & Justice;
(3) Declaration of Donald Duncan, on behalf of Americans for Safe Access;
(4) Declaration of Gabriela Flora, on behalf of American Friends Service Committee;
(5) Declaration of Nita Gonzales, on behalf of Escuela Tlatelolco Centro de Estudios ("Escuela Tlatelolco");
(6) Declaration of Larry Hales, on behalf of Troops Out Now Coalition;
(7) Declaration of Cathrynn Hazouri, on behalf of American Civil Liberties Union of Colorado ("ACLU")
(8) Declaration of Adam Jung, on behalf of Tent State University;
(9) Declaration of Glenn Morris, on behalf of American Indian Movement of Colorado;
(10) Declaration of Damian Sedney, on behalf of Citizens for Obama;
(11) Declaration of Glenn Spagnuolo, on behalf of Recreate 68; and,
(12) Declaration of Zoe Williams, on behalf of CODEPINK.

exercise of their constitutional rights necessarily would be subject to meaningful judicial review, and the only way to achieve such review is through early disclosure. (*Id.*)

The City and the Secret Service, however, have blocked early disclosure of their plans for restrictions on speech and assembly at the Convention site at every turn, insisting that they could not disclose their plans for such restrictions because the government's security plans are not finalized. (*See* Spagnuolo Decl., ¶¶ 9, 10.) This protected refusal to divulge information has now resulted in a situation where the government insists that it will not disclose even some of its plans for restricting speech and assembly until less than eight weeks before the Convention at the earliest, if then, and additionally, that the government also will likely not ever disclose the full contours of all its restrictions on speech and assembly at the Convention site, even upon the eve of the event. (*See* Complaint, ¶¶ 44, 79, 80, 81, and Exs. L and X.)

In addition to refusing to disclose its plans for restrictions on speech and assembly the City has suspended its parade permit application process and has replaced it with nothing – no guideposts or timelines of any kind have been adopted that require the City to process and issue a single parade permit. (*See* Complaint, ¶¶ 50-52.) And so, it has essentially suspended the public's right to conduct marches during the Convention. Nor will the City state when it intends to begin processing the Plaintiffs' pending parade permit requests, again citing its lack of information from the Secret Service. (*See* Complaint, ¶ 81 and Exs. X and Y.)

This entrenched policy of information blackout – at least when demonstration groups ask for such information – is curiously belied by the events some ***six months ago*** when the Democratic National Convention Committee ("DNCC") hosted the news media for a "walk-through" of the Pepsi Center. At that time, on November 13, 2007, the assembled officials were

able to refer with certainty to various security impacts that would be felt by the news media during the Convention. Thus, for example, the news media were told that they would be required to park across Auraria Parkway at the parking center for the Auraria Higher Education Campus because the "security perimeter" on the grounds of the Pepsi Center would not otherwise allow for parking on site, and that within the security perimeter on the Pepsi Center grounds, golf carts would be used for transport by the new media. (*See* Complaint, Ex. A.) In addition, the news media also were told, again fully six months ago, that specific locations already had been identified for various news media broadcast locations "within the credentialed perimeter," as well as other administrative pavilions on the grounds, and they were even provided with detailed diagrams that showed virtually the entire layout of the Pepsi Center grounds. (*See id.*, Ex. B.) Notably missing from those diagrams, however, was any mention, anywhere, of a location where demonstrators would be allowed to march and gather to express themselves.

Shortly thereafter, the ACLU confronted the City with this demonstrable evidence that security arrangements had in fact already been established, with logistical arrangements already being made based upon them and urged the City to move forward with specific planning for the march and demonstration arrangements at the Convention site. (*See* Complaint, Ex. C.) City officials, however, denied that any firm security plans had been communicated to the City, and they retreated back to their old position that they know nothing and they could not disclose anything. (*See* Complaint, ¶ 33; Spagnuolo Decl., ¶ 8; *see also* Complaint ¶ 80-81 and Ex. Y (Susan Greene, "City Mum on Freedom of Speech," *Denver Post*, Mar. 9, 2008, at B-1 (noting that City officials "won't say which streets those groups may march on or how close to the

convention" they will be permitted; "the City says that's because the Secret Service hasn't yet set the security perimeter.")).)

The suspension of the City's ordinary permitting procedures is currently harming the Plaintiffs' First Amendment rights. Under normal circumstances, Plaintiffs would have known some 200 days in advance of their planned marches or rallies whether they had a City-issued permit for their event, and they could begin amassing the substantial logistical resources necessary for conducting a mass rally. *See* Denver Rev. Mun. Code, § 54-361(c) (attached as Ex. M to Complaint). Thus, under Denver's normal ordinance procedures, Plaintiffs would already have been able to begin planning, fundraising, organizing, booking, promoting, advertising, recruiting and all the other activities necessary for a mass demonstration, and they would have been doing so as early as the first week of February 2008. However, because of the City's "Declaration of Extraordinary Event," none of that is possible. (*See* Complaint, Ex. N.) Instead, Plaintiffs have been left with no permits and no certain prospects for any permits, and as a result, their efforts to prepare meaningful speech activities are withering on the vine.

For example, both Recreate 68 and Tent State University have been unable to sign up various organizations that would otherwise be willing to join forces with it and participate in the mass marches that they are planning, all because these organizations do not have any permits for such marches. (*See* Spagnuolo Decl., ¶ 14; Jung Decl., ¶ 19.) Similarly, CODEPINK is unable to sign up the various high-profile speakers and celebrities that would otherwise participate in the march and rally that CODEPINK is planning because the organization has no firm date and no firm permit for its event. (*See* Williams Decl., ¶¶ 20-22.) Equally squeezed out of any prospects to have a meaningful march is Citizens for Obama, which cannot begin the process of advertising

and promoting a march when it has no permit, and no imminent prospects for such a permit. (*See* Sedney Decl., ¶¶ 17-19.)

In fact, each and every one of the Plaintiffs, who are each planning marches or rallies or some other speech activity at or near the Convention site, all attest that the Defendants' refusal to issue parade permits and provide any information about the government's planned speech restrictions is having dramatically negative effects on their ability to organize and prepare for meaningful events. (*See* Ball Decl., ¶¶ 19-22; Cagan Decl., ¶ 15; Duncan Decl., ¶¶ 8, 10; Flora Decl., ¶¶ 21-26, 28-29; Gonzales Decl., ¶ 15-16, 23; Hales Decl., ¶¶ 21-22; Jung Decl., ¶¶ 18-20, 29; Morris Decl., ¶¶ 10, 15-16; Sedney Decl., ¶¶ 17-20; Spagnuolo Decl., ¶¶ 14-18; Williams Decl., ¶¶ 19-27.) As the Plaintiffs' sworn Declarations establish, the government's inaction (in not processing parade permits) and choking off of information, if allowed to continue, will prohibit Plaintiffs from delivering their messages with the kind of vigor and depth that would otherwise make their positions more potent and persuasive. (*Id.*) Even such prosaic concerns as having the ability to coordinate lodging or other accommodations for out-of-town attendees at Plaintiffs' rallies and marches have been exacerbated by the Defendants' policy of non-disclosure and non-implementation of the otherwise applicable permitting processes. (Spagnuolo Decl., ¶ 15.)

Although the Defendants' intransigence is currently harming all of the Plaintiffs, there are certain groupings among the Plaintiffs that illustrate the specific harms. First, there are the parties who have formally sought parade permits from the City, having timely-filed parade permit requests: Recreate 68 (which seeks to conduct five different marches, to various locations, on all four days of and the day preceding the Convention, and which intends to

coordinate certain of its marches with other Plaintiff organizations), Americans for Safe Access, Citizens for Obama, Escuela Tlatelolco, Tent State University, and Troops Out Now.[2] (*See* Spagnuolo Decl., ¶ 12; Duncan Decl., ¶ 6 Sedney Decl., ¶ 5; Gonzales Decl., ¶ 6; Jung Decl., ¶ 12; Hales Decl., ¶ 11.)

Second, there are the parties who intend to make use of the so-called "demonstration zone" if its facilities and regulations are conducive to free expression, but who cannot plan their activities in that "demonstration zone" without information about its arrangements: Recreate 68, Americans for Safe Access, Citizens for Obama, CODEPINK, Escuela Tlatelolco, Rocky Mountain Peace & Justice, Tent State University, Troops Out Now Coalition, and United for Peace & Justice. (*See* Spagnuolo Decl., ¶¶ 17-18; Duncan, ¶ 9l; Sedney Decl., ¶ 12; Williams Decl., ¶ 19; Gonzales Decl., ¶ 20-23; Ball Decl., ¶ 18; Jung Decl., ¶¶ 22-24; Hales Decl., ¶¶ 25-26; Cagan Decl., ¶ 16-17.)

Third, there are the parties who will not consent to participation within the caged confines such as a fenced-in "demonstration zone," or whose members or allied organizations simply will not enter such militarized confinement, but who nevertheless intend to express themselves as close as they possibly can to the Delegates and other attendees at the Convention: American Indian Movement of Colorado and Escuela Tlatelolco.[3] (*See* Morris Decl., ¶ 17; Gonzales, ¶ 24.)

---

[2] Other Plaintiffs herein intend to participate in the marches that these permit applicants obtain. (*See, e.g.*, Williams Decl., ¶ 13; Flora Decl., ¶ 15.)

[3] Of course, all Plaintiffs have an interest in ensuring that the "soft-security perimeter" does not unconstitutionally burden protected speech, but for certain groups such as Colorado AIM and Escuela Tlatelolco, this interest is especially pronounced.

All of these parties, and the public in general, are harmed by the Defendants' refusal to announce and go forward with reasonable measures for the issuance of parade permits, "demonstration zone" plans and any permits, and plans and information on the extent of restrictions on speech and assembly on sidewalks and other public walkways in close proximity to the Convention site.. (*See* Ball Decl., *passim*; Cagan Decl., *passim*; Duncan Decl., *passim*; Flora Decl., *passim*; Gonzales Decl., *passim*; Hales Decl., *passim*; Jung Decl., *passim*; Morris Decl., *passim*; Sedney Decl., *passim*; Spagnuolo Decl., *passim*; Williams Decl., *passim*.) These harms will only accentuate with each passing day as the Convention approaches.

DESCRIPTION OF REQUESTED RELIEF

The interim relief requested in the Motion is narrow. It is carefully targeted to achieve only that which is necessary to preserve this Court's ability to adjudicate the next phase of this action: an evaluation of the validity and constitutionality of the Defendants' anticipated regulations of the rights to peacefully assemble, speak freely, distribute pamphlets and other printed materials to Delegates and others, and display signs and other visual expression in the public fora of Denver at and around the Convention and within sight and sound of the Delegates. Importantly, the Preliminary Injunction order sought here does ***not*** require the public disclosure of confidential security details or any specific national security plan or contingency arrangement. Instead, the requested relief merely directs that the Defendants share whatever information is necessary amongst themselves in order to facilitate the immediate announcement of their specific plans for the marches and assemblies that all concerned anticipate will occur before, during and after the Convention**.** Only after disclosure of those plans and restrictions can the Court proceed

to the next step, if it proves necessary, of evaluating whether those plans unjustifiably infringe on First Amendment rights.

In specific terms, the proposed interim order seeks the following relief with respect to the parties listed below

1. Defendant United States Secret Service and its Director Mark Sullivan ("Federal Defendants") should be directed to take the following actions:

> immediately provide to the City & County of Denver and any other necessary authority, all information necessary for the City to publicly announce its determination of parade regulations and the designated parade routes to the Convention, and any other parade restrictions during the Convention, as well any plans to close or restrict any other public forum space in the City as a result of the Convention, including, but not limited to, any "demonstration zone" at or near the Pepsi Center, and any "soft-perimeter security zone".

2. Defendant City and County of Denver and its Deputy Chief of Police Michael Battista ("Municipal Defendants") should be directed to take the following actions:

> a. upon receiving the aforesaid information from the Federal Defendants, immediately make public all restrictions that will be imposed on the "demonstration zone" within sight and sound of the Pepsi Center and the Delegates attending the Convention, including but not limited to:
>
> - § the location and size of the zone,
> - § any restrictions on the number of persons to be permitted in the zone at any one time,

- § the locations of all entrances and exits to the zone,
- § any requirements or restrictions that will be imposed on anyone entering the zone,
- § the nature, height and transparency of any barriers that will be constructed or placed that obstruct, interfere with or limit communication between persons in the zone and delegates and other attendees at the Convention,
- § any restrictions on the size or nature of any signs or banners that may be displayed in the zone, and
- § all provisions, restrictions, logistical arrangements, and hours of operation of a public address system and/or speaker's podium or stage in the zone;
- § any additional regulations or restrictions that will apply to persons wishing to exercise their free speech rights in the zone

b. upon receiving the aforesaid information from the Federal Defendants, immediately begin implementation of a permit application process for the use any stage(s) or podium(s) at the "demonstration zone" at the Pepsi Center during the Convention;

c. upon receiving the aforesaid information from the Federal Defendants, immediately publicly announce any plans to close or restrict access to any other public forum space, such as streets, sidewalks, walkways, and parks, as a result of the Convention;

d. upon receiving the aforesaid information from the Federal Defendants ,immediately announce publicly the routes, time slots, and all other limitations or restrictions that will be imposed for any parade that will be permitted during the week in which the Convention occurs;

e. upon receiving the aforesaid information from the Federal Defendants, immediately to begin processing the timely filed requests to obtain parade permits, including the conduct of a lottery, if necessary, to allocate permits among competing requests for the parade routes and times requested.

ARGUMENT

I. PRELIMINARY INJUNCTION STANDARD

In this Circuit, to prevail on a motion for a preliminary injunction, the moving party must establish that:

> (1) he or she will suffer irreparable injury unless the injunction issues;
> (2) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party;
> (3) the injunction, if issued, would not be adverse to the public interest; and,
> (4) there is a substantial likelihood of success on the merits.

Summum v. Pleasant Grove City, 483 F.3d 1044, 1048 (10th Cir. 2007), *cert. granted*, 2008 WL 833260 (U.S. Mar. 31, 2008) (quoting *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005)); *see also Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1254-55 (10th Cir. 2006). When a motion for a preliminary injunction seeks mandatory relief, the request "must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is

extraordinary even in the normal course." *O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) (en banc), *aff'd*, 546 U.S. 418 (2006); *see also Schrier*, 427 F.3d at 1259. Under this "heightened scrutiny" for mandatory injunctions, the party seeking such relief must "make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *O Centro*, 389 F.3d at 976; *see also Summum*, 483 F.3d at 1049. For purposes of the interim relief sought herein, the Plaintiffs concede the "heightened scrutiny" described in *O Centro* applies.[4] However, "'[T]he gist of the standards is probably easy to understand in common sense terms even if the expression is imperfect: the judge should grant or deny preliminary relief with the possibility in mind that ***an error might cause irreparable loss to either party. Consequently, the judge should attempt to estimate the magnitude of that loss on each side and also the risk of error***." 389 F.3d at 999 (Seymour, J.) (concurring in part, dissenting in part) (quoting Dan B. Dobbs, *Law of Remedies*, § 2.11(2) at 189 (2d ed. 1993)) (emphasis in original).[5]

Thus, the essential questions for the Court to resolve are: (1) where does the true risk of irreparable harm lie, and (2) what would be the consequences to the parties of error in that evaluation? As discussed more fully below, the Plaintiffs have a strong likelihood of success on the merits of their claims as currently postured. But equally or more importantly for purposes of

[4] In making this concession with respect to the nature of the relief requested in this first preliminary injunction motion, the Plaintiffs explicitly reserve and make no admission on the issue of whether their later motion for substantive review of the Defendants' actual speech and assembly restrictions should be subjected to the "heightened scrutiny" required in *O Centro*.

[5] *But see Bray v. QFA Royalties LLC*, 486 F. Supp. 2d 1237, 1244-45 (D. Colo. 2007) (Kane, S.J.) ("In the end, the entire exercise of dividing preliminary injunctions into categories of 'non-disfavored' and 'disfavored,' and requiring the application of only nominally different standards to each, lacks utility and I would scrap it entirely.").

the present Motion, the consequences of error in denying the requested interim relief will unquestionably cause irreparable harm to the Plaintiffs' rights – destroying both their ability to participate meaningfully in this most singular of events at the heart of our nation's politics and their ability to obtain meaningful judicial review of the specifics of government plans that will result in confining, constraining, and marginalizing the voices of the Plaintiffs' and the supporters they want to join them. As a result, even under the most rigorous of standards, the Plaintiffs are entitled to the interim relief requested in their Motion.

II. PLAINTIFFS ARE ENTITLED TO INTERIM INJUNCTIVE RELIEF

A. Plaintiffs Are Likely To Succeed On The Merits Of Their Claims In Their Current Posture.

The current posture of the Plaintiffs' claims necessarily controls the analysis of whether there is a substantial likelihood of success on the merits. That current posture is one where Denver's municipal ordinances make it a crime to conduct a march on city streets without a permit, and where parties who have timely filed the required paperwork for issuance of necessary parade permits have effectively been denied those permits by the City's failure to act on them. These Plaintiffs currently have no lawful basis for engaging in constitutionally protected conduct (or to make the arrangements now necessary to organize such activity at the Convention) because the Municipal Defendants refuse to issue permits for such activities. (In fact, under the City's ordinances, the Municipal Defendants would be required to hold a lottery and issue the parade permits within ten days of receiving the Plaintiffs' applications, were it not for the City's "Declaration of Extraordinary Event," which nullified the normal ten-day deadline and put in its place an unspecified and indeterminate waiting period.) In other words, the current

posture of the case is one in which ***the Municipal Defendants are presently completely denying the Plaintiffs' rights to conduct any marches or protests on any city street during the DNC***.

Despite various statements by representatives of the Defendants that plans will eventually be announced and requests for parade permits will eventually be processed, no date has been set for such implementation, and the clear risk is that this implementation will not occur voluntarily by the Defendants until it is too late **– *both for the Plaintiffs to prepare for such large scale marches and for the Court to review the City's anticipated restrictions and, if necessary, fashion a remedy***. As discussed below, this unbridled discretion that the Defendants are exercising in delaying and thereby curtailing the Plaintiffs' access to the traditional public forum spaces is patently unconstitutional.

1. Plaintiffs have standing, and their request for interim injunctive relief is ripe.

To establish that he or she has standing to bring the claims asserted, a plaintiff must establish that (1) (s)he has suffered an "injury in fact", (2) there is a "causal connection" between the injury and the governmental action, or inaction, being challenged, and (3) there is a likelihood that the injury will be "redressed" by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1228-29 (10th Cir. 2005). A person suffers an "injury in fact" when there is "an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, *i.e.*, not conjectural or hypothetical." *Summum v. Duchesne City*, 482 F.3d 1263, 1267-68 (10th Cir. 2007) (quoting *Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1255 (10th Cir. 2004)). Moreover, a person need not actually apply for a permit to have standing to challenge a permitting regime if the person's speech activities are otherwise inhibited or abridged by the

regulations. *See City of Lakewood v. Plain Dealer Publ'g Co,,* 486 U.S. 750, 755-56 (1988); *see also Pacific Frontier*, 414 F.3d at 1229 ("[A] litigant who suffers an 'ongoing injury resulting from the statute's chilling effect on his desire to exercise his First Amendment rights' does have standing to sue.") (quoting *Wilson v. Stocker*, 819 F.2d 943, 946 (10th Cir. 1987)); *see also Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) ("[I]t is 'sufficient for standing purposes that the plaintiff intends to engage in "a course of conduct arguably affected with a constitutional interest" and that there is a credible threat that the challenged provision will be invoked against the plaintiff.'") (quoting *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154-55 (9th Cir. 2000)). Moreover, because Plaintiffs who have submitted parade requests or who plan to participate in those parades have a constitutional right to engage in peaceful assembly and expression, and cannot do so lawfully without obtaining a permit from the government, (which various of the Plaintiffs have asked the government to issue them), the Plaintiffs' current injury is redressable by a judicial order requiring the City to process the Plaintiffs' permit requests. *See Valley Outdoor, Inc. v. City of Riverside*, 446 F.3d 948, 953-54 (9th Cir. 2006) (holding that the plaintiff company that had complied with city's municipal code for "late-filed" billboard permits had standing to seek a judicial order challenging "the City's conduct in refusing to *process* the late-filed permit applications") (emphasis added).

A person with standing to bring a claim may nevertheless be denied relief if the claim is not "ripe" for judicial review. *See Renne v. Geary*, 501 U.S. 312, 322 (1991); *Kansas Judicial Review v. Stout*, 519 F.3d 1107, 1116 (10th. Cir. 2008). To determine if a claim presents a live controversy that is sufficiently advanced in a "clean-cut and concrete form," the Court must focus on "whether the harm asserted has matured sufficiently to warrant judicial intervention."

Morgan v. McCotter, 365 F.3d 882, 890 (10th Cir. 2004). To determine whether an issue is ripe, the Tenth Circuit considers ***both***: "'the fitness of the issue for judicial resolution and the hardship to the parties of withholding judicial consideration.'" *Kansas Judicial Review* at 1116 (quoting *Sierra Club v. Yeutter*, 911 F.2d 1405, 1415 (10th Cir. 1990)). Importantly, however, the Tenth Circuit also has held that the ripeness analysis is "relaxed somewhat" in the context of First Amendment challenges because of the risk that unconstitutional government action, or ***inaction***, will chill free speech interests. *See New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995) (holding that the ripeness analysis is relaxed in a First Amendment context and the court must additionally evaluate "the chilling effect the challenged law may have on First Amendment liberties"); *ACORN v. City of Tulsa*, 835 F.2d 735, 739 (10th Cir. 1987); *see also Sullivan v. City of Augusta*, 511 F.3d 16, 31 (1st Cir. 2007) ("We have said that when free speech is at issue, concerns over chilling effect call for a relaxation of ripeness requirements. . . . The rationale for this relaxation is said to stem from a fear of 'irretrievable loss.'") (quoting *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 496 (1st Cir. 1992)); *Martin Tractor Co. v. Fed. Election Comm'n*, 627 F.2d 375, 380 (D.C. Cir. 1980).

In this case, one group of Plaintiffs – those who have filed timely requests for parade permits and those who plan to participate in those parades – has a concrete, particularized, and imminent injury in the form of the City's refusal to act on those applications, and the resulting inability of these Plaintiffs to move forward with the multifarious tasks that are necessary to organize and recruit participants for any such mobile mass demonstration. Thus, for example, Recreate 68 and Tent State University are unable to obtain commitments from other organizations to participate in their requested marches without a determination by the City that

Recreate 68 will actually be granted such a permit, as well as the particular route that will be authorized for Recreate 68's marches. (Spagnuolo Decl., ¶ 14; Jung, ¶ 19.) Similarly, CODEPINK cannot make arrangements for the speakers it would otherwise intend to invite for its march without a determination from the City as to whether any of the particular dates requested by Tent State University are permissible. (Williams Decl., ¶ 20.) And, Damian Sedney, on behalf of his organization Citizens for Obama, cannot even begin to advertise for the rally and march he wishes to conduct because he cannot know whether he will receive any permit at all. (Sedney Decl., ¶ 17.) Finally, Escuela Tlatelolco has extended invitations to nationally prominent leaders in the area of immigrant rights to come to Denver and participate in its "Somos America" march, but has been told that no commitments (and travel arrangements and the like) can be made until a valid parade permit has been issued. (Gonzales Decl., ¶ 16.)

A second group of Plaintiffs – encompassing almost all of the various groups who are Plaintiffs in this action – also has a concrete, particularized, and imminent injury in the form of the Defendants' refusal to make public the plans that have already been formulated for restrictions on the "demonstration zone," which City spokespersons have said will be within sight and sound of the Delegates at the Pepsi Center. The Plaintiffs' injury in this regard stems not just from the likelihood that untimely disclosure of these restrictions will prevent, as it did four years ago in Boston, meaningful judicial review, but it currently interferes with and inhibits the Plaintiffs' ability to organize and plan for events that they wish to conduct within the "demonstration zone," however it is ultimately configured. For example, without information as to the date and time when it will be permitted to use the stage that will be built in the "demonstration zone," CODEPINK is unable to make arrangement for the out-of-town speakers

that it wishes to bring to the march and the rally that it is planning to conduct in the "demonstration zone." (Williams Decl., ¶¶ 20-22.) Similarly, Recreate 68 is unable to determine whether it will be able to bring into the "demonstration zone" the various kinds of displays and signs that it would otherwise use to communicate its message. (Spagnuolo Decl., ¶¶ 17.) And of course, the lack of information about whether citizens will be able to make their voices and message heard directly to convention delegates at the Pepsi Center is directly inhibiting the ability of Plaintiffs to raise funds and generate public interest, and thus public participation, in their planned events. (Williams Decl., ¶ 22.)

The final group of Plaintiffs – also encompassing all of the various groups who are Plaintiffs in this action – have a concrete, particularized, and imminent injury as a result of the Defendants' refusal to disclose what normally public areas at or near the Pepsi Center may be closed or restricted as a result of, or incident to, the establishment of the "soft-security perimeter."[6] Undoubtedly, not all Plaintiffs and their members and supporters will all be able to be within the "demonstration zone" at any one time, for example because of limited space, restrictions on or allocations of stage and podium time, or because certain banners or puppets are not permitted in the demonstration zone and thus must be displayed elsewhere. Thus, these Plaintiffs will want to peaceably assemble in public areas as close as possible to the Pepsi Center when they cannot get in to the "demonstration zone."

In addition, depending on the yet-to-be-disclosed restrictions and limitations, certain Plaintiffs may decline to participate in a fenced-in or caged "demonstration zone" under any

[6] This "soft-security perimeter" is the zone that (based upon past practices at national political conventions) delineates the boundary beyond which members of the general public cannot go in seeking to convey their message to convention Delegates, *i.e.*, outside of any "demonstration zone."

circumstances, for example, members of the immigrants rights community and American Indian community who may understandably be deterred from entering a government-erected, caged-in, "confinement zone." (*See* Decl. of N. Gonzales, ¶ 24; Decl. of G. Morris, ¶ 17.) These organizations and their members would therefore be relegated to attempting to convey their messages to convention Delegates from the boundary of the "soft-security perimeter." These Plaintiffs certainly have a right and interest in peaceably assembling at public forum spaces at or near the Pepsi Center in addition to, or as an alternative to, the "demonstration zone." At present, however, these groups cannot plan and organize to gather their supporters at or near the Convention site because the Municipal Defendants have refused to announce where such protesters will be permitted to congregate, or whether they will be forbidden to approach sufficiently close to the Convention or to the Delegates.

As the foregoing illustrative examples demonstrate, the Defendants' continuing refusal to disclose and implement permitting plans for parades and assemblies at and around the Convention is having a clear-cut impact ***today***, not just at some future date, on the ability of the Plaintiffs to organize and conduct their constitutionally protected speech activities. Moreover, these injuries are clearly and directly "caused" by the Defendants' refusal to issue permits for parades and assemblies at the Convention, and these injuries would be "redressed" by the relief sought herein. *See Valley Outdoor*, 446 F.3d at 953-54. Thus, the clear-cut chilling effect on the Plaintiffs from the continuing refusal of the Defendants to announce and implement reasonable parade permitting procedures and other measures affecting speech activities strongly supports a finding of standing today. *See New Mexicans for Bill Richardson*, 64 F.3d at 1500.

Moreover, the Plaintiffs' injuries are also ripe, and make judicial intervention necessary, because the hardship on the Plaintiffs, and the public, caused by the Defendants' withholding disclosure of the intended restrictions on free speech and assembly rights, which could very well prevent meaningful judicial review, would be irretrievable. As both the U.S. District Court and the First Circuit in Boston noted in the litigation addressing challenges to restrictions on parades and assemblies at the Democratic National Convention four years ago, the absence of sufficient time for meaningful judicial review can itself prevent courts from enforcing effectively the Constitution's requirement that government regulations of expression be narrowly tailored. *See Bl(a)ck Tea Soc'y*, 378 F.3d at 15; *Coalition to Protest*, 327 F. Supp. 2d at 76 &; *see also Bl(a)ck Tea Soc'y*, 378 F.3d at 16 (Lipez, J., concurring) (noting that in order to effect meaningful constitutional review of restrictions on speech and assembly activity, "there must be adequate time to seek recourse in the courts. Adequate time means ***months*** or at least weeks to address the issues.") (emphasis added).[7]

[7] Indeed, a finding that this matter is not ripe would effectively give judicial sanction to a strategy of delaying disclosure of restrictions precisely in order to prevent judicial review, a strategy that takes its cues from the outcome of the litigation surrounding the national conventions in Boston and New York. In those cases, the courts reached very different outcomes on the constitutionality of government restrictions, due in large part to the difference in time the courts had to review the issues. *Compare Bl(a)ck Tea Soc'y*, 378 F.3d at 15, *with Stauber v. City of New York*, No 03-9162, 2004 WL 1593870, at *29 (S.D.N.Y. July 16, 2004); *see also* Susan Rachel Nanes, Comment, "'The Constitutional Infringement Zone': Protest Pens And Demonstration Zones At The 2004 National Political Conventions," 66 La. L. Rev. 189, 223 & 228 (Fall 2005) ("The results in the Boston cases and *Stauber* demonstrate that a First Amendment claim challenging protest pens or demonstration zones may fail or succeed depending on when suit is filed. This disparity sets a dangerous precedent. ***In the future, planners of conventions or other similar events may actively choose to replicate the Boston scheme of unveiling a pen or zone as late as possible, confident that any First Amendment claims will be denied for lack of time and suitable options, regardless of whether or not a violation occurs. . . . Time alone should not be the reason First Amendment rights are diminished***.") (emphasis added); John W. Whitehead, et al., "The Caging of Free Speech in America," 14 Temple Pol. & Civ. Rts.L. Rev. 455, 489-90 (Spring 2005) (describing how the strategy of delay and denial of information has become prevalent at many nationally significant events).

In light of these considerations, this Court must conclude that the Plaintiffs have standing, and their claims are ripe for review at this time.

2. Defendants' intransigence has created an unconstitutional prior restraint on the Plaintiffs' expressive conduct in traditional public fora.

In this case, the words of District Judge Douglas P. Woodlock four years ago, speaking of the last Democratic National Convention in Boston, bear repeating:

> Protesters, demonstrators, and dissidents outside a national political convention are not meddling interlopers who are an irritant to the smooth functioning of politics. They are participants in our democratic life. The Constitution ***commands*** the government to treat their peaceful expressions of dissent with the greatest respect – ***respect equal to that of the invited delegates***.

Coalition to Protest, 327 F. Supp. at 77 (emphasis added).

The First Amendment reflects a "'profound national commitment' to the principle that 'debate on public issues should be uninhibited, robust, and wide-open.'" *Boos v. Barry*, 485 U.S. 312, 318 (1988) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). Protest speech falls squarely within the protection of the First Amendment's guarantees of freedom of speech and assembly. *See Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969) (describing the constitutional privilege of citizens to assemble, parade and discuss public questions in the streets and parks and other traditional public fora); *see also Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 611 (6th Cir. 2005) ("[P]arades and processions are a unique and cherished form of political expression, serving as a symbol of our democratic tradition. There is scarcely a more powerful form of expression than the political march."); *see also Eu v. San Francisco Cty. Democratic Centr. Comm*, 489 U.S. 214, 223 (1989) ("[T]he First Amendment has its fullest and most urgent application to speech uttered during a

campaign for political office.") (citation and quotation omitted); *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."). As a result, there is a "heavy presumption" against the validity of a prior restraint on speech or assembly in a public forum. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (finding that a permit regulation scheme for use of a public park is a form of "prior restraint"); *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941).

Such prior restraints on speech and assembly in a public forum are permissible under the First Amendment only if the government carries its burden of establishing that its restrictions: (1) do not "delegate overly broad licensing discretion to a government official," (2) are content-neutral, (3) are narrowly tailored to serve a significant government interest, and (4) leave open ample alternatives for communication. *Forsyth County*, 505 U.S. at 130; *see also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Citizens for Peace in Space v. City of Colorado Springs*, 477 F.3d 1212, 1219-20 (10th Cir. 2007); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1037 (9th Cir. 2006); *Bl(a)ck Tea Soc'y*, 378 F.3d at 12. "Because these requirements are framed conjunctively, all four must be satisfied, and failure to satisfy even one renders the permit scheme invalid." *Coalition to Protest*, 327 F. Supp. 2d at 69. Moreover, it is beyond doubt that it is the government, not demonstrators, who bear the full and "heavy" burden of justifying restrictions on speech and assembly activities in public fora. *See Board of Trustees of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989); *ISKCON of Potomac, Inc. v. Kennedy*, 61 F.3d 949, 959 (D.C. Cir. 1995) (Ginsburg, J., concurring in part, dissenting in part).

a. The Defendants' restrictions apply to public forum spaces.

In this regard, there can be no question that the regulation of parades on Denver's public streets and assemblies on Denver's public sidewalks constitutes governmental restrictions on expressive conduct in quintessentially traditional public fora. *See Perry Educ. Ass'n v. Perry Local Educs. Ass'n*, 460 U.S. 37, 45 (1983) (holding that public streets and parks are traditional public forums because they "'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions'") (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)); *Duchesne City*, 482 F.3d at 1269; *Citizens for Peace in Space*, 477 F.3d at 1219. Without a valid parade permit, anyone (including Plaintiffs) who occupies the streets and interferes with vehicular traffic is guilty of an unlawful, and therefore criminal act, punishable under Denver's city ordinances by fines or imprisonment. *See* Denver Rev. Mun. Code, § 1-13(a).

Moreover, the outdoor grounds of the Pepsi Center, while it serves as the site for the Democratic National Convention, must be deemed to be a designated public forum. Determining whether private property constitutes a part of the public forum requires first an inquiry that "centers on the objective, physical characteristics of the property," and next on whether the government is "'inextricably intertwined with the ongoing operations" of the private property. *Duchesne City*, 482 F.3d at 1270 (quoting *Utah Gospel Mission v. Salt Lake City Corp.*, 425 F.3d 1249, 1255 (10th Cir. 2005)); *see also First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1122 (10th Cir. 2002) ("[F]orum analysis does not require the existence of government property at all.").

Here, the objective physical characteristics of the outdoor grounds of the Pepsi Center demonstrate that they are a public forum that the community has used since the arena's construction for the exchange of thoughts and the communication of views in precisely the same manner as any other public sidewalk or park. Moreover, its physical design is "seamlessly connected to the public sidewalks at either end and intended for general public." *Venetian Casino Resort, L.L.C. v. Local Joint Executive Bd. of Las Vegas*, 257 F.3d 937, 948 (9th Cir. 2001) (holding that the walkway grounds of the Venetian Casino Resort in Las Vegas, Nevada are a public forum); *see also United Church of Christ v. Gateway Econ. Dev. Corp. of Greater Cleveland, Inc.*, 383 F.3d 449, 452-53 (6th Cir. 2004) (holding that a privately owned sidewalk surrounding a privately owned park was a public forum in part because the spaces "blend[ed] into the urban grid"). Notably, Colorado's Supreme Court has held that similar sidewalks and walkways alongside parking lots adjacent to Coors Field is a traditional public forum subject to full First Amendment protection. *See Lewis v. Colorado Rockies Baseball Club, Ltd.*, 941 P.2d 266, 274-75 (Colo. 1997).[8]

Moreover, under the second factor for public forum analysis, there can be no doubt as to the inextricability of the government's intertwining involvement in the operations of the Pepsi Center for the duration of the Convention. As the site of a quadrennial national political convention, at which the potential next President and his or her party's formal political platform is selected, there can be no doubt as to the fundamental national significance of the event, nor

[8] Moreover, the Colorado Supreme Court also has conclusively interpreted the Colorado Constitution as requiring the application of public forum protections to certain privately-owned property that operate as the functional equivalent of a downtown business district. *See Bock v. Westminster Mall Co.*, 819 P.2d 55, 62 (Colo. 1991) (holding that Colorado's constitutional protections for free speech necessitates a broader application of public forum protections than the First Amendment).

any doubt about that the government is intimately involved in the operation of the site of the Convention. Indeed, in response to a formal request by Colorado Governor Bill Ritter dated March 13, 2007, the Secretary of Homeland Security, Michael Chertoff, on April 23, 2007, designated the DNC in Denver a "National Special Security Event" "pursuant to Homeland Security Presidential Directive 15/National Security Directive 46." As a result, the Secret Service has assumed exclusive command and control over all security operations on the Pepsi Center grounds; and, the Pepsi Center will lose any vestige of private control for the duration of the Convention as all access into any portion of the grounds of the arena will be controlled at the so-called "soft-security perimeter" line by local police, and at the "hard-security zone" by the Secret Service. (*See* Complaint, ¶¶ 24-28; Spagnuolo Decl., ¶ 8.)

In light of these considerations, all of the Defendants' restrictions on speech and assembly at and around the Pepsi Center involve regulation of traditional or designated public fora.

b. Defendants' restrictions have delegated unbridled discretion to the government.

It is well-established that government restrictions on speech and assembly activities are unconstitutional under the First Amendment when they allow government officials to exercise unbridled discretion in the granting or denial of permits for such activity. *See Forsyth County*, 505 U.S. at 130 ("A government regulation that allows arbitrary application is 'inherently inconsistent with valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.'") (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981)); *see also Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 (2002); *Saia v. New York*, 334 U.S. 558, 559-60 (1948);

Women Strike for Peace v. Morton, 472 F.2d 1273, 1286 (D.C. Cir. 1972) (Wright, J., concurring) ("A prior restraint without adequate standards is precisely the sort of abuse against which the First Amendment was primarily directed."); *Women Strike for Peace*, 472 F.2d at 1293 (Leventhal, J., concurring) (observing that an "official regulatory scheme that empowers regulatory officials to pick and choose among those seeking to use public facilities for communicative activity, without providing narrowly drawn standards for the exercise of official discretion" is "condemn[ed]" as "an invalid prior restraint").

As the U.S. Supreme Court in *City of Lakewood* explained, when the government is granted unfettered discretion, the government has the power to engage in viewpoint-based decisions under the guise of content neutrality: "Standards provide the guideposts that check the licensor and allow courts quickly and easily to determine whether the licensor is discriminating against disfavored speech. Without these guideposts, *post hoc* rationalizations by the licensing office, and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether the licensor is permitting favorable, and suppressing unfavorable, expression." 486 U.S. at 758.

Courts have repeatedly struck down ordinances and permit regimes that fail to provide adequate limitations on administrative discretion, on the grounds that the absence of such restrictions creates an opportunity for government officials to engage in content-based or viewpoint-based distinctions over access to public forum spaces. *See, e.g.*, *Forsyth County*, 505 U.S. at 133l; *Int'l Action Ctr. v. City of New York*, 522 F. Supp. 2d 679, 690-93 (S.D.N.Y. 2007); *A.N.S.W.E.R. Coal. v. Kempthorne*, 537 F. Supp. 2d 183, 203 (D.D.C. 2008); *see also Duchesne City*, 482 F.3d at 1274 n.3 (noting that the failure to provide any guidelines on the exercise of

municipal discretion in its special legislation dealing with the placement of monuments in city parks constituted a form of "unbridled discretion" that was "clearly unconstitutional"); *American Target Advert., Inc. v. Giani*, 199 F.3d 1241, 1252 (10th Cir. 2000) (striking down a municipal ordinance provision that allowed the official responsible for issuing certain licenses to withhold approval of applications that she deemed incomplete, and allowing "unbridled discretion" to demand unspecified further information from applicants as a condition of granting the licenses).

In this case, there are absolutely ***no*** objective standards that guide the Defendants' ***refusal*** to announce and implement a reasonable permitting scheme for the public forum spaces at and around the Pepsi Center. Indeed, without this Court's intervention, the Municipal Defendants could potentially wait, and indeed have intimated that they may well actually wait, ***until mid-August*** to begin the process of issuing permits to conduct marches on City streets during the convention. The City's unilateral suspension of its ordinary strict timetable for processing applications for parade permits renders the present status quo void of any guideposts or other safeguards requiring the City to act within a certain time, or any time at all.

Importantly, Denver's ordinance governing the issuance of parade permits would have required the City to have already acted upon (or by inaction, having granted) the Plaintiffs' permit applications, were it not for the City's Declaration of Extraordinary Event. Without the Declaration of Extraordinary Event, the ordinance ***requires*** the City to grant or deny the Plaintiffs' parade permit applications within ten (10) days (or to hold a lottery within 10 days if there were conflicting applications), *i.e.*, more than a month ago, the City's failure to take action on these applications within the specified time would constitute an approval of the application. *See* Denver Rev. Mun. Code § 54-361(d). Similarly, Denver's ordinances also impose the time

limits on the City's permit-issuing obligations in connection with applications for park permits. *See id.*, § 39-78(d). Thus, it is only the Mayor's Declaration of Extraordinary Event that purportedly allows the City to withhold action on the parade permits that the Plaintiffs have requested. *See id.*, § 54-361(c); § 39-77(b); *see also* Decl. of Extraordinary Event (Ex. N to the Complaint). But, nowhere in the Extraordinary Event declaration itself, or anywhere else in Denver's ordinances or in any other regulation or law, are there any enforceable standards or objective guideposts to channel the Defendants' exercise of discretion in acting or refusing to act on the Plaintiffs' pending permit requests or otherwise to implement procedures under the Extraordinary Event declaration for the Plaintiffs' assembly and speech at the Convention. This standard-less exercise of discretion is precisely what the Court in *Forsyth County* struck down. *See* 505 U.S. at 133l; *see also A.N.S.W.E.R. Coal.*, 537 F. Supp. 2d at 203.

In addition, the City's Extraordinary Event Declaration has created a situation where a once-narrowly cabined municipal ordinance is now adrift in a discretionless sea of delay. The fact that the City has had delayed action on the Plaintiffs' parade permit requests for more than two months, with no end in sight to the delay, is itself a fundamentally unconstitutional restraint of the Plaintiffs' free speech rights. *See Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 802 (1988) (holding that a licensing scheme is unconstitutional under the First Amendment where it imposes delay that "compels the speaker's silence").[9]

[9] The doctrine prohibiting discretion-less delay under *Riley*, and its related progeny in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), have been held not to apply to situations of content-neutral regulation where the delay does not prevent a speaker from later expressing his message at the desired time. *See Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1258-59 (10th Cir. 2004) (discussing *Thomas v. Chicago Park Dist.*, 534 U.S. 316 (2002)). *But see Southeaster Ore. Barter Fair v. Jackson County*, 401 F.3d 1124, 1128-29 (9th Cir. 2005) (Berzon, J., with six other judges, dissenting from the denial of rehearing en banc) (pointing out that the Tenth Circuit had mis-read the holding of *Thomas* in its decision in *Utah Animal Rights*: "To the extent others of those

Continued on following page . . . .

The intransigence of the City, which it asserts is attributable to the Secret Service, produces here precisely the predicted effect of allowing the City to discriminate between favored and disfavored expression, allowing the planning of all manner of speech activities by the Democratic National Convention Committee, party Delegates, Convention attendees, the media, and others to go freely forward, while any dissenting voice is relegated to wait, hat in hand. Under this scenario, civic authorities will – regardless of whether it be intentional or unintentional – allow so much time to go that the dissenters will be unable to organize any meaningful expression during the Convention, or at least the kind of broad and vibrant expression that otherwise would be possible were the City to extend to the dissenters the same respect for First Amendment values that it already has extended to the convention organizers. *See, e.g.*, Nanes, "Constitutional Infringement Zones," *supra* note 7, 66 La. L. Rev. at 228 ("[E]vent authorities must not be permitted to drag their feet before revealing their security plans

---

Continued from previous page . . . .

cases, like the panel in this case, read *Thomas* as having held that there is no longer any need for clear timeliness standards for the consideration of content-neutral permits affecting speech activities, those cases are wrong, and we should not follow them.")

In this case, nevertheless, the *Thomas* exception to the prohibition against discretion-less delay does not apply. The Municipal Defendant's delay here in processing the Plaintiffs' parade permit requests is having actual, current chilling effect on the Plaintiffs' free speech rights by inhibiting them from organizing and planning the presentations they would otherwise be able to mount. (*See, e.g.*, Gonzales Decl., ¶¶ 11, 14-16 ; Williams Decl., ¶¶ 20-27.)

Indeed, this factual record as to the current, on-going, and irreparable harm being suffered by Plaintiffs from the Defendants' actions illustrates why the holdings in *Utah Animal Rights* and *Thomas* is not applicable here. As the panel noted in *Utah Animal Rights*, the plaintiff there had "offered no evidence regarding the amount of advance notice realistically required for a group to stage a successful demonstration." 371 F.3d at 1261 n.7. Here, however, the evidence assembled by these Plaintiffs is undeniable that the City's failure to process parade permits and move forward with arrangements for the "demonstration zone" is having a dramatic negative impact on the Plaintiffs' ability to stage a successful demonstration. (*See* Ball Decl., ¶¶ 19-22; Cagan Decl., ¶ 15; Duncan Decl., ¶¶ 8, 10; Flora Decl., ¶¶ 21-26, 28-29; Gonzales Decl., ¶ 15-16, 23; Hales Decl., ¶¶ 21-22; Jung Decl., ¶¶ 18-20, 29; Morris Decl., ¶¶ 10, 15-16; Sedney Decl., ¶¶ 17-20; Spagnuolo Decl., ¶¶ 14-18; Williams Decl., ¶¶ 19-27.)

to demonstration organizers. The less time is made available in advance for a somewhat open exchange of positions or an effective and fair judicial resolution, the less time will be available to fashion reasonable and comparable alternative channels for protestors to express their views. Fifty protesters cannot convey their message as powerfully as five thousand or fifty thousand protestors.").

Thus, the Defendants' refusal to announce and implement reasonable permitting measures is unconstitutional as a delegation of unbridled discretion.

c. The Defendants' restrictions are not narrowly tailored to serve a significant government interest.

Under the "narrow tailoring" prong of public forum analysis, the government "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advice its goals." *Ward*, 491 U.S. at 799; *Citizens for Peace in Space*, 477 F.3d at 1220. To demonstrate that a challenged restriction is narrowly tailored, the government must demonstrate that the restriction "serve[s] a substantial state interest in a direct and effective way." *Edenfield v. Fane*, 507 U.S. 761, 773 (1993) (quotation omitted). Absent such proof, a restriction "may not be sustained if it provides only ineffective or remote support for the government's purpose." *Id.* at 770. The "essence of narrow tailoring" is that the government restriction must "focus[] on the source of the evils the [government] seeks to eliminate . . . and eliminate[] them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." *Ward*, 491 U.S. at 800 n.7.

In such analysis, the burden falls on the government to show that its "recited harms are real . . . and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys Inc. v. FCC*, 512 U.S. 622, 664 (1994). "It is not enough that the City justify

its restrictions based broadly on 'security.'" *Citizens for Peace in Space*, 477 F.3d at 1221; *see also Bl(a)ck Tea Soc'y*, 378 F.3d at 13 ("Security is not a talisman that the government may invoke to justify ***any*** burden on speech (no matter how oppressive).") (emphasis in original). Instead, the government is required to show "that there be a ***real nexus*** between the challenged regulation and the significant governmental interest sought to be served by the regulation." *A.N.S.W.E.R. Coal.*, 537 F. Supp. 2d at 195 (emphasis in original) (quoting *Community for Creative Non-Violence v. Kerrigan*, 865 F.2d 382, 389 (D.C. Cir. 1989)).

In this case, the government has the burden of demonstrating that the Defendants' current, and continuing, refusal to announce and implement plans for marches in the downtown environs and for both marches and assemblies around the Convention site directly serves, and thus is narrowly tailored to advance, the government's putative interests in maintaining security for the event. To make that showing, it also bears the burden of demonstrating that it is not imposing unnecessary burdens on the Plaintiffs' efforts to express themselves. As Circuit Judge Lipez forcefully pointed out in the *Bl(a)ck Tea Society* case, delay in announcing anticipated restrictions or regulations governing free speech activity at public gatherings of singular importance, such as a national political convention, necessarily results in a lack of narrow tailoring of those restrictions: "Inevitably, the absence of time becomes an important element in determining whether a given time-place-manner restriction is narrowly tailored to serve a government interest in maintaining security." 378 F.3d at 16 (Lipez, J., concurring) (citing *United for Peace & Justice v. City of New York*, 323 F.3d 175, 178 (2d Cir. 2003)).

The City's own ordinances demonstrate that the delay in announcing and implement reasonable permitting measures is not narrowly tailored. Under Denver's ordinance for parades

on City streets, absent an Extraordinary Event declaration, an applicant is permitted to submit an application as early as two hundred (200) days prior to the planned parade, *i.e.*, nearly ***seven months*** prior to the event. *See* Denver Rev. Mun. Code, § 54-361(c). Thus, in the ordinary course, there is absolutely no need to withhold a permitting process for a parade until just days or weeks before the event. Moreover, it is indisputable that in withholding the permitting process for the Plaintiffs' requested marches, the City is directly and effectively burdening the ability of these organizations to recruit participants, diminishing the prospects for them to attract the large crowds of participants who would lend weight to the messages they wish to deliver. (*See, e.g.*, Spagnuolo Decl., ¶¶ 14-18 ; Sedney Decl., ¶¶ 17-20.)

Finally, the lack of narrow tailoring can also be seen in the excessiveness of the Defendants' refusal to announce anything about the regulations, limitations, or and conditions that the government intends to impose at and in the "demonstration zone" and other public forum spaces at or near the Pepsi Center. This refusal means that the Plaintiffs cannot know whether, or when, they might be permitted to bring an invited speaker to the podium in the "demonstration zone." (*See, e.g.*, Gonzales Decl., ¶ 23.) It also means that the Plaintiffs cannot prepare for or construct any of the floats, sculptures, or other large displays that they wish to use to convey their messages in the "demonstration zone" and other areas at or near the Pepsi Center. (Williams Decl., ¶ 27.)

Of course, most importantly, the Defendants' delay also fails the test of narrow tailoring because it unnecessarily burdens the Plaintiffs' right to an opportunity to seek judicial review, if necessary, of the reasonableness or validity of any of the planned restrictions on the Plaintiffs' marches or assemblies. For example, the City's website devoted to permits for the DNC

suggests that there will be one, and only one, approved route for parades/marches that come within sight and sound of the Pepsi Center and Convention Delegates. Plaintiffs maintain that such a limited "choice" of routes is itself an unconstitutional restriction on their rights of assembly and speech. Plaintiffs should not be precluded from fully litigating that claim because of Defendant's inaction in announcing such restrictions. This refusal is particularly overweening in light of the clear authority in the *Bl(a)ck Tea Society* decision dictating the need for early disclosure so as to facilitate adequate judicial review. *See* 378 F.3d at 15.[10]

In this light, the Defendants' refusal to announce and implement reasonable measures for the exercise of free speech and assembly rights at and around the Convention is not narrowly tailored.

d. The Defendants' restrictions fail to leave open adequate alternative channels for communication to the Delegates and other attendees at the Convention.

It is well-settled that "[a]n alternative channel is not sufficient if speakers are not permitted to reach their intended audience." *Service Employees Int'l Union, Local 660 v. City of Los Angeles*, 114 F. Supp. 2d 966, 972 (C.D. Cal. 2000) (citing *Bay Area Peace Navy v. United*

[10] At this stage of the proceedings, it is impossible for Plaintiffs to predict what governmental interest the Defendants will assert as a rationale for their failure to process permits and failure to disclose the anticipated regulations of expression. The Plaintiffs presume, however, that the government intends to assert its interest in maintaining order and preventing law-breaking as the basis for its purported need for secrecy. The Plaintiffs note, however, that such a justification would fly in the face of generations of understandings of the First Amendment: "The generally accepted way of dealing with unlawful conduct that may be intertwined with First Amendment Activity is to punish it after it occurs, rather than to prevent the First Amendment activity from occurring in order to obviate the possible unlawful conduct." *Collins v. Jordan*, 110 F.3d 1363, 1371 (9th Cir. 1996) (citations omitted); *see also Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1228 (9th Cir. 1996) (holding that the government "is not free to foreclose expressive activity in the public areas on mere speculation about danger. Otherwise, the government's restriction of first amendment expression in public areas would become essentially unreviewable.") (citations omitted); *Service Employees Int'l Union, Local 660 v. City of Los Angeles*, 114 F. Supp. 2d 966, 972 (C.D. Cal. 2000) ("First Amendment jurisprudence teaches that banning speech is an unacceptable means of planning for potential misconduct.").

States, 914 F.2d 1224, 1227 (9th Cir. 1996)). As the Eleventh Circuit has noted, "[f]or elections to occur with due respect for the democratic process, competing political views cannot be asphyxiated by locating their expression at a distance so far as to render them meaningless, or by treating one view-point less favorably than another." *Elend v. Basham*, 471 F.3d 1199, 1207 (11th Cir. 2006); *see also Coalition to Protest*, 327 F. Supp. 2d at 72 ("It is well established that the location of a demonstration may be 'an essential part of the message sought to be conveyed," as well as "essential to communicating with the intended audience.'") (quoting *Nationalist Movement v. City of Boston*, 12 F. Supp. 2d 182, 192 (D. Mass. 1998)).

In this case, the Defendants' refusal to issue even a single permit for a march or disclose their plans for restricting assembly at or near the Convention site means that not only are there ***insufficient alternative opportunities*** for the Plaintiffs to convey their messages to the Delegates and other attendees at the Convention, at this point in time, there are ***no alternative opportunities***. Moreover, it remains uncertain whether the City will issue permits for marches during the DNC that travel along city streets to other edifices of particular significance for demonstration marches – such as the federal courthouses and the U.S. Mint. The Defendants' current stance – refusing either to issue any parade permits or to disclose any information about planned restrictions – if allowed to continue, will effectively choke off any and all alternatives for the Plaintiffs to communicate with the delegates, the news media, and others at the Convention. This complete absence of any means to communicate effectively with the intended evidence flies in the face of the First Amendment. *See Schneider v. New Jersey*, 308 U.S. 147, 163 (1939) ("One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.").

3. Conclusion.

In light of the foregoing considerations, the Defendants' current posture is unconstitutional because it vests unbridled discretion in government officials, it is not narrowly tailored to serve a significant government interest, and it fails to allow for ample alternative channels of communication.[11] As a result, the Plaintiffs have a substantial probability of success on the merits of their claim.

B. Plaintiffs Are Suffering Irreparable Injury.

An impermissible prior restraint on speech creates, by its very essence, irreparable injury because it is a violation of the First Amendment, and the "loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Pleasant Grove City*, 483 F.3d at 1083 ("Deprivations of speech rights presumptively constitute irreparable harm for purposes of a preliminary injunction."); *Utah Licensed Beverage Ass'n v. Leavitt*, 256 F.3d 1061, 1077 (10th Cir. 2001) (holding that the presumption of irreparable injury from the denial of First Amendment rights applies even in the context of intermediate-scrutiny cases). Indeed, numerous courts analyzing restrictions on citizens' right to speak and assemble peacefully on public forum spaces have

[11] For purposes of this motion only, and without conceding the issue in connection with any other relief that the Plaintiffs may seek, Plaintiffs do not assert that the Defendants' refusal to disclose and implement a reasonable permit program for marches and assemblies during the Convention is a viewpoint-based regulation. The Plaintiffs note, however, that there is substantial reason to believe that the ultimate restrictions on speech and assembly that the government may wish to impose on marches and rallies at the Convention center may well constitute viewpoint-based discrimination. *See* Don Mitchell, "The Liberalization of Free Speech: Or, How Protest in Public Space is Silenced," 4 Stan. Agora 1, 39 (2004) ("Indeed, in the end, isn't protest zoning really just a way of controlling the *content* of debate without really acknowledging that that is what is being done, by, for example, privileging the right of WTO ministers to meet and speak over the right of protest groups to contest that speech?"). Thus, although the issue is not raised by this motion at this time given the limited information currently available to Plaintiffs, the Plaintiffs expressly reserve their right to do so at other points in this litigation.

consistently held that the denials of access by the government impose injuries that can never be adequately remedied with retrospective monetary awards. *See, e.g., Stauber v. City of New York*, No 03-9162, 2004 WL 1593870, at *24-*25 (S.D.N.Y. July 16, 2004) (holding that the New York City Police Department's plans for restrictions on protesters at the Republican National Convention in 2004 would cause irreparable harm to protesters' First Amendment rights); *SEIU Local 660*, 114 F. Supp. 2d at 974-75 (holding that the Los Angeles Police Departments' plans for restrictions on protesters at the Democratic National Convention in 2000 would cause irreparable harm to the protesters First Amendment rights); *see also Tucker v. City of Fairfield,* 398 F.3d 457, 464 (6th Cir. 2005) (holding that a municipal ordinance that prohibited a union from using an inflatable balloon as part of its protest march caused irreparable injury to the union's free speech rights).

In this case, not only must the Plaintiffs' injury be "presumed" to be irreparable, the evidentiary record demonstrates that it is, actually, and on a continuing basis, irreparable. Every passing day without a valid parade permit is one less day that the Plaintiffs are able to undertake the herculean efforts necessary to organize mass demonstrations and make their voices heard to the Delegates. Every passing day without implementation of reasonable permitting measures and disclosure of the planned regulations of expressive activities during the DNC is another infringement on the Plaintiffs' ability to recruit individuals to attend and to support financially their planned activities. The record demonstrates that Plaintiffs are currently, and will continue, losing potential participants in their planned activities because of the inadequacy or unavailability of affordable lodging and other accommodations now that the City has ensured that no permits will be issued until well after all of the reasonably- priced motel and other

lodging facilities are already booked for the Convention week. (Spagnuolo Decl., ¶ 15.) Similarly, every passing day is another loss of the Plaintiffs' ability to recruit and secure commitments from speakers and other high-profile participants for their rallies and demonstrations at the Convention. (Gonzeles Decl., ¶¶ 15-16.) Without clear information and reasonable permitting measures for use of the "demonstration zone," the Plaintiffs are unable to demonstrate to potential supporters and participants that they have viable plans that can be counted upon. As a direct and unavoidable result of the Defendants' inaction, the Plaintiffs are being deprived of their ability and right to present a meaningful message to Delegates and others at the Convention. The essential impact of the Defendants' intransigence is an irreparable diminution of the size, vibrancy, diversity, and effectiveness of the Plaintiffs' messages. (*See, e.g.*, Williams Decl., ¶ 27.)

In addition to these very real, practical, and continuing impacts from the loss of time, (which can never be recovered), there is also the potential for the devastatingly irreparable loss of the opportunity for meaningful judicial review. *See Bl(a)ck Tea Soc'y*, 378 F.3d at 16 (Lipez,, J., concurring). There is simply no way to calculate the damage of lost time insofar as the delay impedes the Court's ability to review, and, if necessary, remedy, the government's regulation of expressive activities. As the First Circuit and the District Court expressly noted in the Boston cases, with more time, it might have been possible to fashion more narrowly-tailored measures that would have ensured adequate public safety without necessitating the "internment camp" that Boston established for persons who wished to express their views. *See id.* at 15; *Coalition to Protest*, 327 F. Supp. 2d at 74 & 76. Indeed, it is apparent that the government is already well along in planning for all manner of uses of the outside grounds of the Pepsi Center, having even

mapped out, as early as November of last year, the various locations for news media broadcast trucks and stages which were described by the Democratic National Convention as being within the security perimeter. (*See* Ex. A to Complaint.) The longer the Defendants are permitted to cloak their already-formulated plans in secrecy, the more likely it will be that the Defendants create "facts on the ground" that may cabin and cramp that ability of the Court to fashion meaningful measures to ensure that the government's restrictions do not unnecessarily burden speech and assembly during the Convention.

C. The Balance Of Equities Favors Issuance Of An Interim Order.

This Court must consider the very real injuries to Plaintiffs' First Amendment interests if no interim order is issued. In weighing that against whatever potential injury the Defendants may attempt to assert were the interim relief to be granted, the Court must bear in mind Judge Seymour's admonition in *O Centro*: the balance cannot be deemed to weigh in the government's favor when the government presents only arguments for "potential harm" and does so with only conclusory assertions of a speculative risk. *See O Centro*, 389 F.3d at 1009 (Seymour, J., concurring in part, dissenting in part)) ("Thus, the balance is between actual irreparable harm to plaintiff and potential harm to the government which does not even rise to the level of a preponderance of the evidence."); *see also Pleasant Grove City*, 483 F.3d at 1056.

In this case, the balance of harms between the parties weighs strongly in the Plaintiffs' favor. Without interim relief, the Defendants will continue to choke off and diminish the opportunity for meaningful dissent and meaningful judicial review. This present, continuing, and irreparable injury substantially outweighs the utterly speculative concern that disclosure of the government's regulations of marches and assemblies will somehow pose a nebulous and

unproven risk to security. The disclosures the Plaintiffs request here, will not, indeed cannot, increase any potential security risk that is not already well-known and well-anticipated by the government.

In light of what is already known generally about the government's plans, in addition to the fact that the government's security plans are already so thoroughly advanced, the relief requested here poses no marginal increase in any potential risk to any legitimate government interest. Instead, the government's non-disclosure functions to protect against only one risk – the risk that with knowledge and implementation of reasonable permitting measures, the Plaintiffs and others will be able to mount well-attended assemblies and marches, with high-profile speakers, and with well-organized media messages, all of which are actually effective in showing the country, and the world, their dissenting messages. The prospect that speech will be loud, robust, or effective poses no danger that the government has any legitimate interest in forestalling. In light of the well-established protection the Constitution affords to political dissent and to robust public discourse on matters of public concern, it cannot be gainsaid that the balance of equities weighs heavily in favor of the injunctive relief sought herein.

D. The Public Interest Favors Issuance Of An Interim Order.

The proposition that the public interest favors the exercise of constitutionally protected speech and assembly is well-established. *See ACLU v. Reno*, 929 F. Supp. 824, 851 (E.D. Pa. 1996) ("No long string cite of citations is necessary to find that the public interest weighs in favor of having access to the free flow of constitutionally protected speech.") (quotations omitted), *aff'd*, 521 U.S. 844 (1997); *see also Pacific Frontier*, 414 F.3d at 1237 ("Vindicating First Amendment freedoms is clearly in the public interest."); *Elam Constr., Inc. v. Regional*

Trans. Dist., 129 F.3d 1343, 1347 (10th Cir. 1997) ("The public interest also favors plaintiffs' assertion of their First Amendment rights."); *Joelner v. Village of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004) (noting that the "public interest in protecting First Amendment liberties is always high").

Although all national political conventions are central to the nation's exercise of self-government, this particular Democratic convention – in the midst of an overseas war, a global environmental crisis, and international economic and political tensions, to say nothing of the Convention's attendant controversies surrounding the selection of a Presidential nominee – is even more so an event of crucial importance for citizens to be given a meaningful opportunity to express themselves on these issues that matter to them and to the nation as a whole.

The Plaintiffs represent a broad diversity of views and issues. They range from organizations seeking an end to the American occupation in Iraq to protection of Native American's rights, from a reasonable immigration policy to a modification of the state and federal policies on marijuana. The one unifying theme among them all is that they wish to be heard. They wish to exercise the rights that the Founding Fathers guaranteed to them and to all people within its borders: the right to speak, to assemble peacefully, and to petition the government for redress of grievances. That is what this Court must hold sacrosanct. That is where the public interest lies.

CONCLUSION

In light of the foregoing, the Court should promptly schedule an expedited hearing on the Plaintiffs' motion, and upon the conclusion of that hearing, the Court should enter the requested interim injunctive relief as set forth in the motion and its accompanying proposed order.

Respectfully submitted this 1st day of May, 2008

By: /s Steven D. Zansberg

Steven D. Zansberg
Christopher P. Beall
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
1888 Sherman Street, Suite 370
Denver, Colorado 80203
(303) 376-2400
In cooperation with the American Civil Liberties Union Foundation of Colorado

Mark Silverstein
Taylor Pendergrass
ACLU FOUNDATION OF COLORADO
400 Corona Street
Denver, Colorado 80218
(303) 777-5482

Attorneys for Plaintiffs
American Civil Liberties Union of Colorado,
American Friends Service Committee,
American Indian Movement of Colorado and **Glenn Morris**,
Americans for Safe Access,
Citizens for Obama and **Damian Sedney**,
CODEPINK,
Escuela Tlatelolco Centro De Estudios,
Recreate 68,
Rocky Mountain Peace & Justice Center,
Tent State University,
Troops Out Now Coalition and **Larry Hales**,
and
United For Peace & Justice