



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

February 5, 2008

Michael Battista  
Deputy Chief of Operations  
Denver Police Department  
1331 Cherokee St.  
By email to [REDACTED]

Katherine Archuleta  
Senior Advisor on Policy and Initiatives  
Office of the Mayor  
City and County of Denver  
By email to [REDACTED]

Dear Chief Battista and Ms. Archuleta:

In May, 2007, the ACLU began meeting with you and other Denver city officials to discuss how the planning for the Democratic National Convention (DNC) at the Pepsi Center might impact the exercise of First Amendment rights during the time of the convention in August, 2008.

As you know, the ACLU advocates preserving—to the greatest extent possible--the right of members of the public to express their views in traditional public fora such as streets, sidewalks, and public parks. As you also know, at past political conventions, law enforcement's interest in security has prompted restrictions on the availability of these public fora in areas near the convention site.

Denver is about to begin accepting applications for the use of these public fora during the time of the convention. Applicants will very soon be attempting to plan demonstrations that may use public rights of way such as streets, sidewalks, and bicycle paths. They may also be planning to apply for the use of public parks that are close to the Pepsi Center.

Hanging over all these potential plans is a cloud of uncertainty. The public has been told that there is likely to be a "hard security zone" surrounding the Pepsi Center from which the general public will be excluded. Rumors have circulated to the effect that this zone of exclusion will cover a large radius and will include streets, sidewalks, bicycle paths, and parks that are normally open to the public. In our meetings last year, City officials repeatedly denied that any decisions had yet been made about the scope of any "hard security zone." We were told that such a decision would be made by the Secret Service, which, we were told, has overall authority for the security of events such as the DNC that are designated as National Special Security Events.

Michael Battista  
Katherine Archuleta  
February 5, 2008  
Page 2 of 3

Persons who are planning First Amendment activities, as well as the general public, have a right to know which normally-public locations will be open and which ones may be closed. Such information is critical not only to the planning of First Amendment activities and other events, but also to providing input to City officials as they formulate plans for the locations where demonstrators and other members of the public will be permitted to congregate. The ACLU is willing and interested in providing such input to City officials as they make plans to assure the right of potential demonstrators to deliver their messages within sight and sound of their intended audience.

I write to ask that you now provide information about which normally-public areas are expected to be within the “hard security zone” and which areas will not be closed to the general public. I also write to ask for a meeting to begin discussing the Denver Police Department’s plans for any areas outside this “hard security zone” that will be designed to accommodate demonstrators and other members of the public who wish to communicate messages to the delegates, to the media, and to other members of the public.

As similar plans were being formulated for the 2004 Democratic National Convention in 2004, Boston officials met with and received input from attorneys for the ACLU and the National Lawyers Guild. It is my understanding that the geographic outlines of the “hard security zone” were made available for these discussions as early as January, 2004. With regard to the normally-public area in Denver that may be closed during the DNC, even if no decisions had yet been made when we last discussed this issue, those decisions have surely been made by now.

There is a strong public interest in early discussion of which public rights of way and which public fora will remain open to demonstrators and the public. In connection with past political conventions, courts have sometimes disagreed with law enforcement’s view of the proper balance between security concerns and the First Amendment rights of the public. Examples include the San Diego and Chicago conventions in 1996, and the Los Angeles convention in 2000.

The more recent cases challenging the “protest cages” set up outside the Boston convention in 2004 underscore the need for early discussion. Both the district court and the court of appeals expressed dismay that the case was brought to them in the form of a request for emergency injunctive relief only days before the convention, in a posture that did not permit adequate time for full review or adequate time to remedy what the district court regarded as “an offense to the spirit of the First Amendment.” *Coalition to Protest the Democratic National Convention v. City of Boston*, 327 F. Supp. 2d 61, 76 (D. Mass. 2004). Early discussion provides the opportunity to revise plans in response to input received from the public, as Denver recently did, to its credit, with regard to the proposals to redraft ordinances regarding permits for parks and parades. Early discussion also provides the opportunity for full and orderly judicial review if such review turns out to be necessary.

Michael Battista  
Katherine Archuleta  
February 5, 2008  
Page 3 of 3

I would expect, as part of our continuing dialog, that you are already intending to provide the information requested in this letter. In order to ensure that this disclosure occurs promptly, I ask you to consider this letter as a request, under the Colorado Open Records Act and the Colorado Criminal Justice Records Act, for any documents that will reveal which ordinarily-public spaces are expected or planned to be closed to the general public during the time of the DNC in 2008. After you provide that information, I look forward to setting up a time to meet and discuss.

Please call me if you have any questions. You can call me on my direct line at 303-777-5482 ext. 114.

Sincerely,



Mark Silverstein  
Legal Director, ACLU of Colorado

Cc: David Fine, Denver City Attorney, by email to [REDACTED]