

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

Civil Action No. **08-cv-00910-MSK**

AMERICAN CIVIL LIBERTIES UNION OF COLORADO, a Colorado non-profit corporation;  
AMERICAN FRIENDS SERVICE COMMITTEE, a Pennsylvania non-profit corporation;  
AMERICAN INDIAN MOVEMENT OF COLORADO, a Colorado unincorporated association;  
AMERICANS FOR SAFE ACCESS, a California non-profit corporation;  
CODEPINK, a California non-profit corporation;  
ESCUELA TLATELOLCO CENTRO DE ESTUDIOS, a Colorado non-profit corporation;  
LARRY HALES, a Colorado citizen in his capacity as a representative of TROOPS OUT NOW COALITION, a New York unincorporated association  
GLENN MORRIS, a Colorado citizen, in his capacity as a representative of unincorporated association THE AMERICAN INDIAN MOVEMENT OF COLORADO  
RECREATE 68, a Colorado non-profit corporation;  
ROCKY MOUNTAIN PEACE & JUSTICE CENTER, a Colorado non-profit corporation;  
DAMIAN SEDNEY, a Vermont citizen, in his capacity as a representative of the unincorporated association CITIZENS FOR OBAMA;  
TENT STATE UNIVERSITY, a Colorado non-profit incorporation;  
TROOPS OUT NOW COALITION, a New York unincorporated association, and,  
UNITED FOR PEACE & JUSTICE, a New York non-profit corporation,  
**Plaintiffs,**

**v.**

THE CITY AND COUNTY OF DENVER, COLORADO, a political subdivision of the State of Colorado;  
MICHAEL BATTISTA, in his official capacity as the Deputy Chief of Operations for the Denver Police Department, an agency of the City and County of Denver, Colorado;  
THE UNITED STATES SECRET SERVICE; and,  
MARK SULLIVAN, in his official capacity as the Director of the United States Secret Service,  
**Defendants.**

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**SUPPLEMENTAL AND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF**

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## **INTRODUCTION**

This is a civil action seeking injunctive relief to prevent the abridgment of the Plaintiffs' and the public's, right to speak freely and assemble peacefully in connection with the

thus be subject to challenge. **When the contours of the Defendants' various unconstitutional restrictions on speech and assembly are disclosed, the Plaintiffs expect to ask this Court to review them** and fashion a remedy that complies with the First Amendment while accommodating legitimate security concerns.

Now, as a result of the Plaintiffs' having filed this lawsuit, and (in compliance with this Court's Order entered June 9, 2008), the Defendants have disclosed their plans to restrict the Plaintiffs' rights (and those of the public) to engage in free speech, freedom of assembly, and freedom to petition the government for redress of grievances during the week of the Democratic National Convention. Accordingly, the Court is now called upon to independently review those restrictions – enacted in the name of “national security” and “minimization of disruption to vehicular traffic” – and to determine whether they comport with constitutional standards. These restrictions include, (despite sworn commitments and a Court Order to the contrary), an absolute denial of the ability of the Plaintiffs, or the public, to march or gather anywhere within “sight and sound” of the Delegates at the Pepsi Center. The “Designated Parade Route,” established by the Defendants as the only available march route during the Convention, irrespective of whether protestors have any interest in proceeding to the Pepsi Center, terminates thousands of feet from the convention hall, and does not allow anyone to arrive at the Pepsi Center when any Delegates are present at the site. Thus, marchers are relegated to a route that does not take them within sight and sound of either the convention hall or any Delegates at the Convention. Plaintiffs who wish to organize their supporters to march along city streets to convey their message directed at other symbolic edifices of government authority – including this federal courthouse – are simply prohibited from doing so.

At the site of the Convention, the Pepsi Center, those wishing to communicate their message to Delegates cannot enter the public sidewalks and city streets that are closest to the convention hall (Chopper Circle and Ninth Street); instead, they are to be corralled into a chain-link-fence-encircled “demonstration zone” or pen, that is itself far too small to accommodate the size of crowds expected, and that is situated nearly three football fields away from the main entrance to the Pepsi Center, with no possibility of being able to communicate (through “sight and sound”) their message to Delegates entering or exiting the convention hall. As disclosed by the Defendants, those wishing to exercise that most hallowed tradition of free speech – the distribution of handbills, leaflets and other printed materials to willing recipients – will be completely prevented from doing so at the Pepsi Center. Lastly, on information and belief, the Defendants are considering subjecting all citizens who wish to exercise their First Amendment rights in the “Public Demonstration Zone” to unreasonable search and seizure based exclusively upon a person’s choice to exercise his or her fundamental rights (i.e., without any showing of individualized suspicion of probable cause).

Quite clearly, the Defendants’ announced plans fall far short of the standard articulated by one court in describing the government’s obligations to protect the rights of those wishing to express their views at a national political convention: “The Constitution **commands** the government to treat [demonstrators’] peaceful expressions of dissent with the greatest respect – **respect equal to that of the invited delegates.**” *Coal. to Protest the Democratic Nat’l Convention v. City of Boston*, 327 F. Supp. 2d 61, 77 (D. Mass. 2004). Based upon all of the above-referenced recently announced plans of the Defendants, the disclosure of which was prompted by this lawsuit’s filing, the Court is now able to apply the appropriate constitutional

standard to the Defendants' planned restrictions and to determine whether they pass constitutional muster; if, as Plaintiffs maintain, the Defendants are unable to meet their burden to justify the restrictions they have chosen to impose on the Plaintiffs' constitutional rights, then the Court should grant the injunctive relief sought herein, requiring the Defendants to alter their plans to bring them into compliance with the federal and state constitutions.

### **Parties**

#### **A. Plaintiffs**

1. The American Civil Liberties Union of Colorado ("ACLU") is a nonprofit and nonpartisan statewide organization based in Denver with over 10,000 members working together to defend, protect and extend the civil rights and civil liberties of all people in Colorado. The ACLU is an affiliate of the national American Civil Liberties Union, which has affiliates in almost every state, as well as the District of Columbia and Puerto Rico, and has more than 500,000 members and supporters. The ACLU has a longstanding interest in promoting and defending the right of association, the right of free expression, and the right to petition the government for redress of grievances.

2. The American Friends Service Committee ("AFSC"), headquartered in Philadelphia, Pennsylvania, is a nonprofit organization that carries out service, development, social justice, and peace programs throughout the world. Founded by Quakers in 1917, AFSC's work attracts the support and partnership of people of many races, religions, and cultures. AFSC's work is based on the Quaker belief in the worth of every person and faith in the power

of love to overcome violence and injustice. AFSC has 56 offices throughout the United States and internationally, including an office in Denver, Colorado.

3. Americans for Safe Access (“ASA”) is a California nonprofit corporation with its headquarters in Oakland, California, and offices elsewhere in California, Colorado, and Washington, D.C. ASA is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. ASA has more than 40,000 active members, with chapters and affiliates in more than 40 states.

4. CODEPINK is California non-profit corporation with regional offices in New York, Washington, D.C., Los Angeles, and San Francisco, and has over 250 active local groups around the world, including a chapter in Denver. CODEPINK is a worldwide, women-initiated, grassroots peace and social justice movement that works to end the war in Iraq, stop new wars, and redirect resources into healthcare, education and other life-affirming activities. CODEPINK calls for policies based on compassion, kindness and a commitment to international law. With an emphasis on joy and humor, CODEPINK women and men seek to activate, amplify and inspire a community of peacemakers through creative campaigns and a commitment to non-violence.

5. Escuela Tlatelolco Centro De Estudios (“Escuela Tlatelolco”) is a Colorado non-profit corporation. Escuela Tlatelolco is a community-based private school in Denver, Colorado, founded in the late 1960's to provide an alternative education for young Chicanos, Mexicanos and Raza Indigena. Escuela Tlatelolco offers a comprehensive K-12 education, a dual-language

preschool Montessori, adult continuing education, daycare, family service work, a health office, and indigenous music and dance education. In addition to its these programs, Escuela Tlatelolco has long played an active and prominent role in Colorado regarding issues affecting immigrant and indigenous communities.

6. Larry Hales is a Colorado citizen, and is an organizer and member of the Troops Out Now Coalition (“TONC”), which is an unincorporated association headquartered in New York City, New York. TONC is a national grassroots coalition of antiwar activists, trade unionists, solidarity activists and community organ

groups and individuals, both local and national, would see the Convention as a unique opportunity to present their views to the delegates and elected officials who would be attending the convention. Recreate 68 was formed as an umbrella organization to support the nonviolent participation of a broad range of groups in the marches, rallies and demonstrations that have been a feature of all past conventions, and that Recreate 68 considers as integral a part of the political process as the Convention itself.

9. Rocky Mountain Peace & Justice Center (“RMPJC”), is a Colorado non-profit corporation. RMPJC was founded in 1983 in Boulder, Colorado, and is rooted in the spirit of unconditional nonviolence. RMPJC is dedicated to progressive personal and social change. As a multi-issue organization, RMPJC works to restore and protect earth and human rights. RMPJC educates, organizes, acts, and builds community in order to create a culture of justice and peace. RMPJC reaches more than 2,000 people with its email updates and is a member of a statewide peace and justice coalition.

10. Damian Sedney is a Vermont citizen and is a leader of an unincorporated organization called “Citizens for Obama” that filed a request with the City and County of Denver to conduct a march that comes within sight and sound of the Convention site and Delegates. If awarded a “parade” permit, Citizens for Obama intends to conduct a mass march to and rally at the Democratic National Convention in support of Senator Barrack Obama’s nomination as the Democratic Party’s candidate for President.

11. Tent State University (“Tent State”) is a Colorado non-profit corporation. Tent State was launched in 2003 as a project of the Community Empowerment Project at Rutgers University in New Jersey. Its initial purpose was to stop drastic state budget cuts to higher



education that were pending in the wake of the wars in Afghanistan and Iraq. Tent State organized a coalition of over 50 student groups, faculty, and staff unions that came together, and built and occupied, for five days, a tent city symbolizing the displacement of higher education. Since 2003 and up to the present, Tent State University has continued to rally throughout the country at various “Tent States” against the war in Iraq, and it has also been instrumental in raising awareness of other campus issues, such as fair pay for university employees and universities’ unethical contracting policies.

12. United For Peace & Justice (“UFPJ”) is a non-profit New York corporation. UFPJ is a international coalition of local and national grassroots organizations committed to non-violence, working to end the Iraq war and prevent new wars of aggression. Founded in October 2002, UFPJ now includes nearly 1700 groups and organizations, and new groups join monthly. Headquartered in New York City, UFPJ counts membership organizations in every state and in countries all over the world.

13. As set forth below, various of the Plaintiffs, both individually and collectively, intend to take part in multifaceted expressive activities and peaceable assemblies during the Democratic National Convention in Denver, by participating in marches and demonstrations within sight and sound of the Convention site and the Delegates themselves. These Plaintiffs intend to speak directly to Delegates and other attendees at the Convention concerning the Plaintiffs’ various issues, to distribute their pamphlets, brochures, petition cards, and other materials to the Delegates and other attendees, and to engage in lively, entertaining, meaningful political speech in not just the symbolic shadow but the literal shadow of the Pepsi Center, for all the world to see.

14. In addition, as to the various Plaintiffs who are membership organizations, these entities also seek judicial relief in this case on behalf of their various members, representing the associational and speech interests of these members in this lawsuit. For the Plaintiffs who are membership organizations, the purposes of these organizations are germane to the interests asserted in this lawsuit. Moreover, the individual members of these membership organizations would have standing to pursue this lawsuit in their own right, and the participation of individual members is not necessary for the claims asserted and the relief requested.

B. Defendants

15. The City and County of Denver (“the City”) is a municipal corporation, a political subdivision of the State of Colorado, and a Home Rule City and County authorized and created by Article XX of the Colorado Constitution. The City has final authority and responsibility for the Denver Police Department and its employees, including Defendant Battista.

16. Michael Battista is an employee and agent of the City and County of Denver. He is the Deputy Chief of Operations for the Denver Police Department. He is responsible for all of the Denver Police Department’s operational preparations and deployment in connection with the Democratic National Convention. (The City and Deputy Chief Batista collectively are referred to herein as “the Municipal Defendants.”)

17. At all times relevant to this Complaint, the actions or inactions of the Municipal Defendants occurred under color of state law.

18. The United States Secret Service (“the Secret Service”) is an agency of the United States within the Department of Homeland Security. Pursuant to an executive order issued by the President of the United States, the Secret Service has ultimate authority for security

arrangements at events designated as National Special Security Events. The 2008 Democratic Convention, like all political conventions of the major political parties in recent years, has been designated as a National Special Security Event.

19. Mark Sullivan is the Director of the United States Secret Service. (The Secret Service and Director Sullivan collectively are referred to herein as “the Federal Defendants.”).

20. At all times relevant to this Complaint, the actions or inactions of the Federal Defendants occurred under color of legal authority.

### **Jurisdiction and Venue**

21. This Court has jurisdiction over Plaintiffs’ federal constitutional claims pursuant to 28 U.S.C. § 1331 because Plaintiffs’ claims arise under the First, Fourth and Fourteenth Amendments to the United States Constitution and, as to the Municipal Defendants, under 42 U.S.C. § 1983. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, to address the Plaintiffs’ claims arising under the Colorado Constitution.

22. The Court’s jurisdiction over Plaintiffs’ federal constitutional claim against the Federal Defendants is not barred by the doctrine of sovereign immunity in light of the waiver of that immunity enacted by Congress in 5 U.S.C. § 702.

23. Venue is proper in this Judicial District under 28 U.S.C. § 1391(b) as the Municipal Defendants are located in this District and virtually all of the events giving rise to the Plaintiffs’ claims have occurred in this District.

**Factual Allegations**

**I. Plaintiff's Efforts to Confer with Defendants to Forge a Plan for Accommodating Both Security Concerns and Free Speech and Assembly at the DNC**

**A. Early Meetings with the City**

24. On or about January 11, 2007, the Democratic National Committee announced that the 2008 Democratic National Convention (hereinafter "the Convention") would be held in Denver, Colorado. The dates of the Convention were announced to be August 25 - 28, 2008.

25. In the Spring of 2007, representatives of Recreate 68 and the ACLU initiated a series of meetings with Deputy Chief Battista and other representatives of the City to discuss arrangements for free speech and assembly activities during the time of the Convention.

26. The first meeting was held on May 23, 2007. In addition to Deputy Chief Battista and representatives from Recreate 68 and the ACLU, the meeting also was attended by a representative from the National Lawyers Guild. Also present from the City were representatives from the Mayor's Office and representatives from the Office of the Manager of Safety for the City. The meeting was followed by three additional meetings in the summer of 2007 between the ACLU, Recreate 68, Deputy Chief Battista, representatives from the Mayor's Office, and other City officials, on July 26, August 19, and September 27, 2007.

27. At these meetings, Deputy Chief Battista and other representatives of the City indicated that the Secret Service would determine a "hard-security perimeter" around the site of the Pepsi Center. The area inside that perimeter would be under the jurisdiction of, and controlled by, the Secret Service. Chief Battista said that the area outside the "hard security perimeter" would remain under the jurisdiction of the Denver Police Department. He also confirmed the continued validity of the City's policy that in areas under Police Department's

jurisdiction, there would be no need for permits for marches in such areas as the 16<sup>th</sup> Street Mall as long as participants stayed on the sidewalks and obeyed traffic signals.

28. Plaintiffs understand, based on past practices at other national political conventions, as well as the standard procedures of the Secret Service at various other “National Special Security Events,” that in addition to the hard-security perimeter at the Convention site, there will also be a the “soft-security perimeter” that delineates the boundary beyond which members of the general public cannot go in seeking to convey their messages to convention Delegates, *i.e.*, outside of any “demonstration zone.”

29. At the meetings between Recreate 68/ACLU and the City, Deputy Chief Battista confirmed that the City intends to set up a “free speech zone” or “demonstration zone” that would be close to, but outside of, the Secret Service’s “security perimeter.” Deputy Chief Battista indicated that the location of the “demonstration zone” would not be determined until the Secret Service determined the boundary of the “hard-security zone.” He stated that the “demonstration zone” would be “within sight and sound” of the Convention site, but he did not then, nor has any City official since then, made any commitment that the “demonstration zone” would be within “sight and sound” of Delegates or other attendees at the Convention, or that the “demonstration zone” would be situated in a manner that would facilitate direct communication with Delegates and others who wish to hear the messages of citizens gathered at the “demonstration zone.”

30. In these early meetings, City officials stated that a representative of the Secret Service would be working full-time in Denver beginning in September 2007. A representative of the Secret Service attended the meeting on August 19, 2007, but he stated that the agency had no

information to provide that would reveal the location or nature of the “demonstration zone.” At the meeting on September 27, 2007, City officials stated that they still had no information they could provide about the location of the “security perimeter” or the location of the “demonstration zone.” At this meeting, Deputy Chief Battista indicated that it would be “safe to say” that City officials would have sufficient information to be able to discuss the details of the “demonstration zone” about “six months out” from the date of the convention (*i.e.*, in March 2008).

B. The News Media’s “Walk-Through”

31. On November 13, 2007, members of the national and local press, as well as the “blogging” community, were provided a “walk-through” of the Pepsi Center by the Democratic National Convention Committee (“DNCC”). In the course of that walk-through, the DNCC distributed detailed maps showing where the media pavilions and satellite transmitting trucks

the Convention Site,” and that the news media would be given “Unlimited Access” to begin construction of their facilities “[b]eginning at 8 a.m., July 7, 2008.”

34. Attendees at the November 13 media “walk-through” were also told that golf carts would be available for use “within the security perimeter.”

35. In light of these disclosures to the news media concerning the apparently firm plans for – and actual knowledge of – the “security perimeter” around the Pepsi Center, on December 6, 2007, representatives from the ACLU met with representatives from the City to discuss, among other things, “the security perimeter now established as noted in the DNCC media walk-through.” A copy of the December 4, 2007 email memorializing the meeting topics is attached as **Exhibit C**. At that meeting, however, the City’s representatives denied that they had any knowledge of the contours or plans for any security perimeter.

C. Correspondence on Proposed Revisions to City’s Permit Ordinances

36. In December 2007, in anticipation of the DNC, the City undertook a comprehensive revision of its ordinances governing permits for city park and parades. The ACLU requested, and the City granted, the opportunity to review and comment upon the proposed revisions.

37. On or about December 21, 2007, the ACLU sent a letter to City Attorney David Fine in which it provided comments and suggestions on the City’s proposed revisions to its parade and park permitting ordinance. A true and correct copy of this letter is attached hereto as **Exhibit D**, and is incorporated herein by reference. That letter expressly noted that the City’s announced intention to have Denver Mayor John W. Hickenlooper declare “an Extraordinary Event” with respect to the DNC did not include any statement identifying the scope of the “hard

security zone” around the Pepsi Center. The ACLU’s letter also stated that, “the City provides no information regarding how the City’s permitting decision may be affected by security zone boundaries...The answers to these questions may dramatically impact the operation and constitutionality of the proposed scheme, and should be addressed by the City *immediately.*” (emphasis added).

38. On January 9, 2008, the ACLU sent a letter to City Attorney David Fine, in which the ACLU sought clarification regarding what the City believed would constitute a “conflict” for purposes of triggering a “lottery” to obtain a parade permit when two or more permit applications were filed for parades to occur on the same date. A true and correct copy of that letter is attached hereto as **Exhibit E**, and is incorporated herein by reference. In that letter, the ACLU expressly urged the City to provide for multiple parades per day and/or to authorize the conduct of simultaneous parades at different areas/routes within the City. *Id.*

39. On January 11, 2008, the ACLU sent a letter to City Attorney David Fine, in which the ACLU confirmed a conversation earlier that same day, at a meeting between ACLU representatives and the City Attorney’s office, at which the City Attorney represented that more than two parades could be allowed per day, but not simultaneous parades. A true and correct copy of that letter is attached hereto as **Exhibit F**, and is incorporated herein by reference. In that letter, the ACLU objected to the City’s announcement that it would only permit a single parade or march at any time during the DNC, stating, “We believe that a large city like Denver can accommodate parades in separate parts of the city at the same time.” *Id.*

40. On January 15, 2008, City Attorney David Fine sent a letter to the ACLU, in which Fine stated, on behalf of the City, that, “We will continue to limit parades to one per time



slot. The ordinance does not necessarily limit parades to now [sic] more than two per day anywhere in Denver; however, it does express our policy that no more than one parade should be occurring at any one time within the city.” A true and correct copy of that letter is attached hereto as **Exhibit G**, and is incorporated herein by reference.

D. Further Correspondence on Security Restrictions

41. On February 5, 2008, the ACLU sent a letter to Mayor Hickenlooper’s office (to the attention of Ms. Katherine Archuleta, the mayor’s chief aide on Convention matters) and to the Denver Police Department (to the attention of Deputy Chief Michael Battista) asking that the City disclose its plans for providing permits for parades and its plans for the “demonstration zone” within sight and sound of the Pepsi Center. It also requested that the City identify which normally-public areas might be closed or have restricted access during the DNC. The letter further requested a meeting to discuss the requested information. A true and correct copy of that letter is attached hereto as **Exhibit H**, and is incorporated herein by reference.

42. On February 18, 2008, the ACLU sent a second, “follow-up” letter to Mayor Hickenlooper’s office (to the attention of Ms. Katherine Archuleta) and to the Denver Police Department (to the attention of Deputy Chief Michael Battista) asking for disclosure of all records (pursuant to Colorado’s Criminal Justice Records Act) that would evidence the City plans for providing permits for parades and for the “demonstration zone” within sight and sound of the Pepsi Center, and, again, requesting a meeting to discuss those plans. A true and correct copy of that letter is attached hereto as **Exhibit I**, and is incorporated herein by reference.

43. On February 21, 2008, Ms. Mary Dulacki, the custodian of the records that the ACLU had requested from the City, sent a response letter to the ACLU, denying the records

request and referring the question of a meeting to Deputy Chief Battista. A true and correct copy of that letter is attached hereto as **Exhibit J**, and is incorporated herein by reference.

44. In her letter, Ms. Dulacki stated, “The discussions on the subject of which normally public areas may be closed or have access restricted during the time of the DNC are ongoing. No document on these issues has been finalized at this time as the process is evolving and the discussions between various security agencies continue.” *Id.*

45. On February 22, 2008, counsel for the ACLU sent an email to Ms. Dulacki, attaching copy of a *Ms. Magazine* website story that reported the City had removed 14 public parks from the park permitting process and requesting to inspect all records in the city’s custody or control regarding that decision. A true and correct copy of that email is attached hereto as **Exhibit K**, and is incorporated herein by reference.

46. Also on February 22, 2008, Ms. Katherine Archuleta sent an e-mail message to representatives of Recreate 68 and the ACLU, responding to a request for another meeting, in which she stated on behalf of the City that city officials had no “new information to share” about “specific details about the security perimeter and related matters.” A true and correct copy of that e-mail message is attached hereto as **Exhibit L**, and is incorporated herein by reference.

E. Enactment of Revised Ordinances and Declaration of “Extraordinary Event”

47. On February 4, 2008, the City Council of the City & County of Denver enacted Ordinance Nos. 55-08 and 56-08, which substantially rewrote the City’s permit regulations for parades and assemblies in City parks. Those ordinances are now codified at Denver Rev. Mun. Code §§ 39-61, *et seq.*, and 54-357, *et seq.* A true and correct copy of those municipal code provisions is attached hereto as **Exhibit M**, and is incorporated herein by reference.

48. Under Denver's revised permit ordinances, the City is required to process applications for parade permits no less than ten (10) days upon receipt. Denver Rev. Mun. Code § 54-360(d). If there are no conflicting requests for parades, any failure by the City to meet the time frames for review of the permit applications results in automatic approval of the permit application. If there are conflicting request for parades, then the City must hold a lottery in no less than ten (10) days to allocate the permits. Denver Rev. Mun. Code § 54-361.5(b).

49. Under the revisions to the municipal code, certain provisions may be unilaterally altered or amended via an executive decree that declares a certain time period to be an "extraordinary event." Pursuant to these revisions, while parade permit applications normally may be submitted 200 days before an event, this timeframe can be altered if the Mayor declares an event to be an "extraordinary event" and a "different time period is specified." Denver Rev. Mun. Code § 54-361(c). In addition, under normal conditions, when the City receives conflicting parade permit applications, a lottery must be held within 10 days. During an "extraordinary event," however, "additional or alternative lottery procedures may be provided in the declaration." Denver. Rev. Mun. Code § 54-361.5(b).

50. On February 28, 2008, Mayor John W. Hickenlooper issued a Declaration of Extraordinary Event in connection with the Convention, altering all parade and park permit procedures for a portion of the city that encompasses the entire downtown core and the Pepsi Center environs from August 15, 2008 to August 31, 2008. A true and correct copy of the City's publication of that Declaration is attached hereto as **Exhibit O**, and is incorporated herein by reference.

51. Pursuant to this Declaration, the City has suspended procedures that otherwise would apply to parade permits under Denver Rev. Mun. Code §§ 54-357, *et seq.*, First, although the code does not allow it under any circumstances, in the Declaration the Mayor announced that no parade permit applications would be accepted or used by the City during the DNC. Instead of “applications” for parade permits defined and referenced in the code, the Mayor declared that only “requests” for parades would be accepted. Nowhere in the code is there any provision for suspending the permitting application process and supplanting it with “requests.” The Mayor’s Declaration is silent as to how other provisions of the code that refer to “parade permit applications” will apply, if at all, to the new system of “requests” pronounced for the first time in the Declaration.

52. Second, the code allows the Mayor to alter the 200-day time frame for accepting parade permit applications during an extraordinary event, provided that he “specify” a “different time period” for when the City will accept those applications. In the Declaration, however, the Mayor simply despatched with the 200-day guideline and did not specify any alternative date for accepting or processing requests for parade permits.

53. Third, the code allows the Mayor to create “additional or alternative” lottery procedures during an extraordinary events instead of holding a lottery within ten (10) days of the receipt of conflicting applications, if the Mayor specifies alternate procedures. In the Declaration, however, the Mayor discarded the 10-day requirement and did not specify any designated date certain for when the lottery would be held.

54. In addition, although the City has appropriately processed applications by groups and individuals wishing to assemble peaceably in Denver’s public parks during the DNC, the

Declaration warns permit holders that, “Because security planning for the DNC will be ongoing between now and the time of the event, particularly in regard to the area immediately adjacent to the convention site, all permit and licenses will reserve to the city the right to modify or revoke the permit or license if the city deems such modification or revocation necessary in the interest of public safety or security.”

55. The Declaration includes a commitment that the City “will identify at least one designated parade route in the affected area for groups to engage in speech and expressive activities through the use of marches, processions or parades, *with the route terminating within sight and sound of the convention site.*” (Emphasis added)

56. In sum, the Declaration provides no guidelines or standards that specify when the City must accept, process or grant or deny parade permits, nor does the Declaration disclose any other restrictions the City intends to impose on speech activities within the downtown area of Denver.

F. ACLU’s FOIA Request to the Secret Service

57. On January 21, 2008, counsel for the ACLU sent a letter to the Secret Service, seeking records under the federal Freedom of Information Act (“FOIA”) that evidence the date that security perimeters were communicated to state and/or local agencies at past National Special Security Events.

58. On March 7, 2008, the Secret Service responded to the ACLU’s request, under the FOIA, to inspect records concerning the security arrangements planned for the DNC, in which the Secret Service asserted that “there are no records or documents pertaining to your requests in

Secret Service files.” A true and correct copy of that letter is attached hereto as **Exhibit O**, and is incorporated herein by reference.

59. On April 8, 2008, the ACLU filed a formal administrative appeal of the Secret Service’s denial of its request to inspect records pursuant to the FOIA, which is currently pending. A true and correct copy of that letter is attached hereto as **Exhibit P**, and is incorporated herein by reference.

G. Summary: Defendant’s Withholding of Information

60. The actions of the Defendants, collectively, in refusing to disclose any information concerning their planned restrictions of speech and assembly during the Convention, as described above, fly in the face of congressional testimony in August 2007 by an Assistant Director of the Secret Service. In that testimony, during a field hearing in Aurora regarding the security plans for the 2008 National Conventions, Timothy Koerner unambiguously declared that the Secret Service’s “objective is to provide *timely* information about how security measures will affect individuals *so that no one is unnecessarily inconvenienced*.” A true and correct copy of Mr. Koerner’s prepared testimony is attached hereto as **Exhibit Q**, and is incorporated herein by reference.

**II. Plaintiffs’ Efforts to Obtain Permits to Peaceably Assemble and Engage in Free Speech at the DNC**

61. On March 3, 2008, the City began accepting requests for applications for permits to assemble in public parks, under the revised municipal ordinances, and the Mayor’s “Declaration of Extraordinary Event,” as described above.

62. The City proceeded to process the requests for applications it received for public parks permits, and it conducted a “lottery” to allocate parks permits among competing

applications for the same park on the same date. The City, however, declined to accept any applications for parade permits. Instead, the City accepted only “requests” for applications to obtain permits to conduct parades/marches on city streets during the dates of the DNC. City officials indicated that they would not accept “applications” for parade permits, and they would not process the requests for applications, until some unspecified and undetermined date in the future.

63. On or about March 8, 2007, Plaintiff Americans for Safe Access, through the auspices of its organizer Richard Eastman, submitted requests to the City for “parade permits” to conduct marches on each day of the DNC. A true and correct copy of the parade permit request that Americans for Safe Access submitted and that is on file with the City, is attached, and incorporated herein, as **Exhibit R**.

64. Also in early March 2008, Plaintiff Escuela Tlatelolco timely filed two separate requests for applications to obtain parade permits for a march to be held on either of the middle two days (August 26 and 27) of the DNC. A true and correct copy of the parade permit requests that Escuela Tlatelolco submitted and are on file with the City are attached, and incorporated herein, as **Exhibit S**.

65. Plaintiff Escuela Tlatelolco intends to organize a march on August 26 or 27, entitled the “Somos America” march, that will call upon the delegates to the National Convention to commit to a comprehensive overhaul of our nation’s immigration laws. It will also urge lawmakers attending the Convention to pass “the DREAM Act.” If enacted, that statute would allow all graduates of Colorado state high schools, regardless of their immigration status, to pay in-state tuition at Colorado public colleges and universities.

66. Also in early March 2008, Plaintiff Recreate 68 timely filed five (5) separate requests – through four different members of Recreate 68, all of whom were acting on behalf of Recreate 68 – for applications to obtain parade permits during the four days of, and one day preceding, the DNC. A true and correct copy of the parade permit requests that Recreate 68 submitted and are on file with the City are attached, and incorporated herein, as **Exhibit T**.

67. Plaintiff Recreate 68 intends to conduct parades on each of the five days for which it has sought permits. For each of its marches, Recreate 68 intends to focus on a different theme and have different parade routes. Thus, for example, on August 24, 2008, Recreate 68 plans to conduct an “End the Occupations” march that will protest the continued American military occupation of, and involvement in, Iraq, by marching from the Capitol of the State of Colorado to Convention site. On August 25, 2008, Recreate 68 wishes to conduct a march to the Federal Courthouse, as a symbol of the federal government, to protest the treatment of prisoners by America’s military and intelligence services in places like Guantanamo Bay, Cuba, and elsewhere, and the failure of the American judicial system to protect the human rights of those prisoners. Recreate plans to have a march every day of the Convention, and various of the marches that are planned to travel to the Convention itself will include floats and symbolic displays to protest the failure of the Democratic Party to heed the voices and needs of the dispossessed in our society. In one such march, Recreate 68 plans to create a gargantuan puppet to be carried and operated by dozens of marchers, with the puppet to arrive at the “demonstration zone” alongside the Convention and to be used as part of Recreate 68’s message to Delegates and other attendees there.



68. Also in early March 2008, Plaintiff Damian Sedney, on behalf of “Citizens for Obama,” timely filed four separate requests for applications to obtain parade permits, to conduct a march entitled “Ten Million Citizens March for Obama,” during the four days of, and one day preceding, the DNC. Citizens for Obama intend to conduct a march to the Convention site in support of the candidacy of Senator Obama, regardless of whether he is the presumptive Democratic Party nominee. A true and correct copy of the parade permit requests that Mr. Sedney submitted on behalf of Citizens for Obama, that is on file with the City, is attached, and incorporated herein, as **Exhibit U**.

69. Also in early March 2008, Plaintiff Tent State University timely filed a request to obtain a parade permit during the four days of, and one day preceding, the DNC. Plaintiff Tent State University intends to organize a “parade/march” during one of the days of the Convention that will call upon the Delegates immediately to end federal diversion of capital and other resources being spent in the Iraqi military action and to invest those resources instead in U.S.-based higher education. A true and correct copy of the parade permit requests that Tent State University submitted and are on file with the City are attached, and incorporated herein, as **Exhibit V**.

70. Also in early March 2008, Plaintiff Larry Hales, on behalf of Plaintiff Troops Out Now Coalition and through its related organization Denver International Action Center, submitted a request for a parade permit to conduct marches during all four days of the Convention and the day preceding it. A true and correct copy of the parade permit request that Troops Out Now Coalition submitted and is on file with the City are attached, and incorporated herein, as **Exhibit W**.

71. In addition to these various marches, almost all of the Plaintiff organizations (and the individuals representing them) are planning to gather with others in one or more peaceable assemblies, to conduct demonstrations and other expressive activities within sight and sound of the Delegates, the news media, and other attendees to the Democratic National Convention, and also within sight and sound of the Pepsi Center, the symbolic “home” of that Convention, between the dates of August 24 and August 28, 2008. The Plaintiffs intend to communicate their message directly with the Delegates through signs, banners, chants, speeches, street theater, and through handing the Delegates pamphlets and other written materials. These Plaintiff organizations intend to do so at the so-called “demonstration zone” if the facilities created by the City there are conducive for such expression, but in any event, they intend to conduct these expressive activities as close as possible to the Delegates and the Convention.

72. For certain Plaintiff organizations, however, the prospect of being caged behind wires and fencing, with battalions of riot-clad law enforcement flanked around them, is anathema. In the eyes of these organizations, such militarism and forced confinement in the face of peaceful, humble petitioning is wholly inappropriate, and they will refuse to enter such a “demonstration zone.” Instead, these organizations intend to exercise their constitutional right of peaceful assembly and speech on the public forum spaces, such as sidewalks, walkways, and the like, as close as possible to the Convention. For these Plaintiff organizations, therefore, it is imperative that the City not unconstitutionally close off access to public sidewalks in close proximity to the Convention. For these Plaintiffs, the contours and restrictions of the so-called “soft-security perimeter,” which will be controlled by the Denver Police Department and which

will block access to the Convention site further away that the Secret Service's "hard-security perimeter," will be crucial.

**III. The City's Initial Refusal to Issue Parade Permits or to Disclose a Timetable or Any Other Details About Its Process for Issuing Parade Permits and Its Plans to Allow Free Speech and Assembly at the Pepsi Center Venue**

73. Prior to the filing of this civil action, the City had not processed any of the parade requests that had been filed by any of the Plaintiffs for an application to obtain a parade permit for the time period of the DNC.

74. Indeed, the City had not disclosed even *when* it would begin to process the multiple and competing requests to conduct marches on City streets during the Convention.

75. The City also had not disclosed how many parade permits it would issue for each the days of the Convention.

76. The City also had not disclosed how many different parade routes would be authorized for purposes of conducting marches during the Convention, and what those routes would be. City officials had stated that they would not process the requests for parade permits until it determined at least one "designated parade route." City officials had said that they could not determine this parade route until the Secret Service informed the City of the boundaries of the "security perimeter" that will surround the site of the Convention.

77. The City also had not disclosed any other plans or restrictions for the parade routes, such as what ingress and egress would be permitted along the routes.

78. Prior to the filing of this civil action, the City also had not announced its plans for the location, physical layout of a so-called "Public Demonstration Zone", or the barriers and restrictions around the Zone that it plans to construct and that would serve as a confined and

restricted area for individuals and organizations to congregate and to attempt to engage in expressive activities directed at the Delegates and other attendees at the Convention.

79. Nor had the City provided any commitment that the location of the Public Demonstration Zone would be within “sight and sound” of the Delegates themselves, or that the Zone would otherwise be designed and constructed to ensure that citizens have meaningful opportunities to communicate fully with attendees at the Convention.

**IV. Prior Pronouncements by Defendants of Their Plans to Withhold the Announcement of Security Arrangements Until the Eve of the Convention**

80. At a community forum held on April 10, 2008, which was recorded by local public access television, Deputy Chief Battista declared that the Secret Service would have jurisdiction and authority for maintaining security only in the immediate vicinity of the convention venue, within a so-called “hard-security perimeter.” He further stated that the federal agency would have no authority or control over the streets and other areas of Denver outside the “security perimeter” that would surround the Pepsi Center. Instead, Defendant Battista stated, security arrangements outside the perimeter would remain under the exclusive jurisdiction of the Denver Police Department. Video clips from this public forum are available on the internet at <http://video.aol.com/video-detail/denver-police-department-on-dnc-plans/2757542467> and <http://video.aol.com/video-detail/democratic-national-convention-plans/3961861686?icid=acvsv2>.

81. At the community forum on April 10, 2008, Deputy Chief Battista also asserted that the Secret Service had not, as of that date, “set” the hard security perimeter around the Pepsi Center. Even after the Secret Service does so, Deputy Chief Battista stated, the City “might never disclose” information concerning the effects of the security arrangements on the general

public or on demonstrators in particular. Instead, the only parts of the security plan that would be disclosed to the public, according to Deputy Chief Battista, would be unspecified information concerning the “free speech zone,” which he stated would not be disclosed “until mid-June.” The deputy chief, however, made no commitment that such a time-frame for disclosure would be maintained, or that the disclosures would be sufficient to permit the public to evaluate the constitutionality of the full battery of restrictions the City intends to impose on free speech activities.

82. In an interview with the *Denver Business Journal*, published on April 11, 2008, Malcolm Wiley, a spokesperson for the Denver office of the Secret Service, stated that the Secret Service would not disclose its plans for the “security perimeter” around the Pepsi Center during the DNC until some point in time “before the month of August, but [he could not] estimate when exactly that will be.” A true and correct copy of the *Denver Business Journal* article quoting Mr. Wiley is attached, and incorporated herein, as **Exhibit X**. A similar position was attributed to the City in a *Denver Post* column a month earlier, a true and correct copy of which is attached and incorporated herein, as **Exhibit Y**.

**V. The Defendants’ Subsequent Disclosures in the Wake of the Filing of this Civil Action**

83. The initial Complaint for Injunctive Relief in this lawsuit was filed May 1, 2008, along with Plaintiffs’ First Motion for Preliminary Injunction.

84. In their responses to that First Motion for Preliminary Injunction, the Defendants revealed that they intend to create a “hard-security zone” around the Convention site, the contours of which they have refused to disclose, but that within this “hard-security zone” – and thus closed to public access and to any First Amendment activity by Plaintiffs – will be the

public street and sidewalks of Chopper Circle and the adjoining portion of Ninth Street, just south of the Pepsi Center.

85. Also in the days following the filing of that First Motion for Preliminary Injunction, the Municipal Defendants initiated negotiations with Plaintiffs concerning the relief sought therein. Those discussions led to the joint filing by all parties on May 22, 2008, of a Stipulation Regarding Partial Resolution of Plaintiffs' First Motion for Preliminary Injunction.

86. Pursuant to that Stipulation, at the request of the parties, the Court subsequently entered an order providing for some of the relief sought in the First Motion for Preliminary Injunction.

87. In particular, in its June 9, 2008, order, the Court directed the Municipal Defendants to:

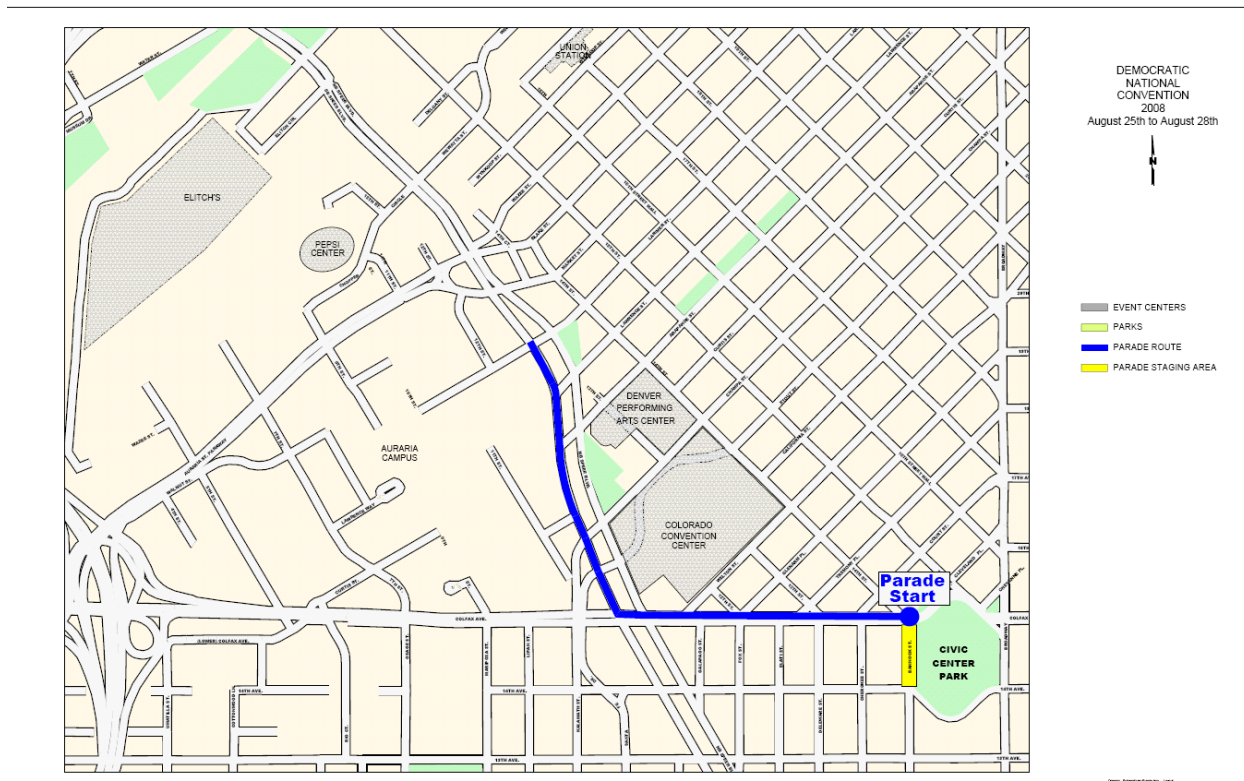
- a. Disclose the exact street-by street route (with the exception of the terminus) of the City's planned Designated Parade Route by June 12, 2008;
- b. Begin processing pending requests for parades, including those by various of the Plaintiffs, by June 12, 2008;
- c. Complete the process of reviewing the parade requests, including those seeking "alternative parade routes" and issue decisions on all pending parade requests of the Plaintiffs by June 19, 2008;
- d. Provide a Public Demonstration Zone on the grounds of the Pepsi Center that is within "sight and sound" of Delegates at the Pepsi Center; and

- e. Ensure that no permit would be required for entry to the Public Demonstration Zone, but that the ingress and egress from the zone may be controlled for public safety reasons based on the capacity of the zone.

88. During the hearing before the Court on June 9, 2008, the Municipal Defendants also agreed to disclose the terminus of the Designated Parade Route on June 12, 2008, and to disclose certain aspects of the Public Demonstration Zone by June 23, 2008.

89. In a sworn Declaration filed in support of the Municipal Defendants' Opposition to the Plaintiff's First Motion for Preliminary Injunction, Mayor John Hickenlooper's assistant Katherine Archuletta committed, again, that the terminus of the Designated Parade Route would be "within sight and sound of the Pepsi Center."

90. On June 12, 2008, the Municipal Defendants disclosed the route of the Designated Parade Route. A true and correct copy of the route pictured in the City's news release concerning this disclosure is reproduced below and is shown in attached **Exhibit Z**:



91. The route the City disclosed ends at the corner of Speer Boulevard and Larimer Street. According to the City, that intersection is the “terminus” of the Designated Parade Route. Contrary to the Extraordinary Event Declaration, as well as sworn statements submitted by the Municipal Defendants in this case, the terminus of the Designated Parade Route is not within “sight and sound” of the Pepsi Center.

92. Also on June 12, 2008, the Municipal Defendants announced that the Designated Parade Route would be available only between 10 a.m. and 3 p.m. during the days of the



Convention. The Delegates to the Convention, however, are not scheduled to begin their activities at the Pepsi Center until 4 p.m. each day.

93. On June 19, 2008, the City announced its decisions with respect to all then-pending parade requests by various Plaintiffs and others. In those decisions, the Municipal Defendants denied the requests for alternative parade routes submitted by Recreate 68, for a march to the Federal Courthouse on August 25, 2008, and by Escuela Tlatelolco, for a march to Sunken Gardens Park on August 26, 2008. The Municipal Defendants granted requests for marches by Recreate 68 and Tent State University on Sunday, August 24, 2008, before the Convention begins, but the routes approved for those marches do not come within “sight and sound” of the Pepsi Center.

94. In its parade decisions on June 19, 2008, the City announced the following allocation of slots for use of the Designated Parade Route:

- a. Monday, Aug. 25, 2008:
  - i. 11:45 am, Recreate 68
- b. Tuesday, Aug. 26, 2008:
  - i. 11 am, Recreate 68
  - ii. 12:30 pm, Escuela Tlatelolco
  - iii. 1:15 pm, We Are Change Colorado
  - iv. 2 pm, Citizens for Obama
- c. Wednesday, Aug. 27, 2008:
  - i. 11 am, Recreate 68
  - ii. 2 pm, Citizens for Obama
  - iii. 2:30 pm, Tent State University
- d. Thursday, Aug. 28, 2008:
  - i. 11 am, Recreate 68
  - ii. 1:15 pm, Americans for Safe Access
  - iii. 2 pm, Citizens for Obama

95. On June 9, 2008, the Municipal Defendants stated in Court that the planned Public Demonstration Zone would comprise a 50,000-square-foot section of Parking Lot A at the Pepsi Center. Later, on June 25, 2008, the Municipal Defendants released a diagram, depicted below, showing the specific location of the Zone:



(This diagram was attached in an email message from counsel for the Municipal Defendants on June 26, 2008, a true and correct copy of which is attached herein as **Exhibit BB.**)

96. Contrary to their representations in open court, Public Demonstration Zone recently announced by Defendants is *not* 50,000 square feet, and it is not large enough to safely contain the number of people that Plaintiffs anticipate will be attending or participating in protest

activities. (The area depicted in the Defendant's diagram encompasses approximately 27,000 square feet, and would only safely accommodate fewer than 4,000 people.)

97. The Defendants' planned location for the Public Demonstration Zone also does not provide "sight and sound" access to the Delegates at the Convention because it is nearly three football-field-lengths away from where the Delegates will congregate at the Pepsi Center. No human voice, or any other sound, subject to the amplification limits contained in the City's current ordinances on sound amplitude, can ever hope to reach a person at the entrance to the Pepsi Center from inside the Public Demonstration Zone. In addition, the view of the Public Demonstration Zone from the entrance to the Pepsi Center is obstructed by extensive tree landscaping and architectural features on the grounds of the site, including four sculptural pylons in the walkway leading out from the Pepsi Center's entrance. Furthermore, for Delegates at the Pepsi Center, the view of the planned location of the Public Demonstration Zone also is likely to be obstructed by the news media facilities that are planned to be placed in front of and around the Zone.

98. In addition to the announcement of the location of the Public Demonstration Zone, the Defendants also have announced that they will not permit, in any manner, the distribution or transmission of leaflets and other printed materials from the Plaintiffs and other persons within the Public Demonstration Zone to any person within the "hard-security zone," including Delegates and other attendees at the Convention.

99. The Defendants also have refused to disclaim a plan to announce that persons entering the Public Demonstration Zone will be deemed to have consented to searches of their person or their possessions. Thus, Plaintiffs allege, on information and belief, that Defendants

plan to conduct searches on the basis of such “implied consent,” in the absence of probable cause or other individualized suspicion. Plaintiffs contend that Defendants cannot require or assume, consistent with either the Fourth Amendment to the United States Constitution or Article II, section 7 of the Colorado Constitution, that persons entering the Public Demonstration Zone give their consent to any such searches.

100. A true and correct copy of the letter, dated June 23, 2008, from the City, regarding the Defendants arrangements and plans for the Public Demonstration Zone is attached hereto as **Exhibit AA**.

**VI. Defendants’ Plans Will Impermissibly Abridge the Plaintiffs’ Constitutional Rights to Freedom of Speech and Assembly**

101. The restrictions that the Defendants have already declared they will impose on the public’s right to gather peacefully and speak freely on the traditional public forum of the sidewalk of Chopper Circle and the adjoining section of Ninth Street, south of the Pepsi Center, and the denial by the Municipal Defendants of the requests of various Plaintiffs to conduct parade marches within sight and sound of the Pepsi Center, and/or other alternative routes to symbolically significant locations in downtown Denver, will unconstitutionally abridge the rights protected by the First Amendment to the United States Constitution and under Article II, section 10 of the Colorado Constitution.

102. In particular, these already declared actions by the Defendants will not be content-neutral, nor will they be narrowly tailored to serve the government’s interest in safety and security, nor will they leave open ample alternative means for the Plaintiffs to conduct meaningful expressive activities.

103. All the Defendants' already-announced restrictions on the Plaintiffs' constitutional rights to speak freely and assemble peacefully at and near the Convention site, and at other symbolically meaningful sites, will cause irreparable injury to them and to the public at large.

104. Plaintiffs have no adequate remedy available at law to ameliorate the irreparable injuries that they will suffer at the hand of the Defendants absent judicial enforcement of measures that vindicate the right of the Plaintiffs and the public to engage in peaceful expression on the issues that are most central to our nation's civic life.

**FIRST CLAIM FOR RELIEF**

Concerning Closure of Traditional Public Forum on Chopper Circle and Ninth Street  
Against All Defendants  
(42 U.S.C. § 1983, Constitution of the United States)

105. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

106. As a result of their already-announced actions, as set forth above, to close the traditional public forum on the sidewalks of Chopper Circle and the adjoining portion of Ninth Street outside the Pepsi Center, the Municipal Defendants, while acting under color of state law, will deprive the Plaintiffs of their rights, privileges and immunities secured to them by the Constitution and laws of the United States, entitling them to relief under 42 U.S.C. § 1983.

107. As a result of their already-announced actions, as set forth above, to close the traditional public forum on the sidewalks of Chopper Circle and the adjoining portion of Ninth Street outside the Pepsi Center, the Federal Defendants, while acting under color of legal

authority, will deprive the Plaintiffs of their rights, liberties and immunities secured to them by the Constitution and laws of the United States, entitling them to relief from this Court.

108. The Defendants' already-announced plan to close these sidewalks is not a content-neutral government regulation.

109. The Defendants' already-announced plan to close these sidewalks is not narrowly tailored to serve the government's asserted interest in safety and security.

110. The Defendants' already-announced plan to close these sidewalks fails to leave open ample alternative channels of communication, in that the planned Public Demonstration Zone is not an adequate alternative for Plaintiffs to speak, assemble and to deliver their messages to their intended audiences.

111. Plaintiffs have no adequate remedy at law to redress fully the Defendants' deprivation of the rights secured to them by the Constitution and laws of the United States.

112. Unless the Court enters injunctive relief barring the Defendants from closing to the Plaintiffs the traditional public forum on the sidewalks of Chopper Circle and the adjoining portion of Ninth Street outside the Pepsi Center, or otherwise ensuring that Plaintiffs have ample alternative channels to communicate their intended messages to their intended audiences at the Convention, the Plaintiffs will suffer irreparable harm.

**SECOND CLAIM FOR RELIEF**

Concerning Closure of Traditional Public Forum on Chopper Circle and Ninth Street  
Against All Defendants  
(Article II, Section 10 of the Colorado Constitution)

113. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

114. As a result of their actions, as set forth above, the Defendants' closure of the traditional public forum on the sidewalks of Chopper Circle and the adjoining portion of Ninth Street, outside the Pepsi Center, will deprive the Plaintiffs of the rights secured to them by Article II Section 10 of the Colorado Constitution.

115. Plaintiffs have no adequate remedy at law to redress fully the Defendants' deprivation of these rights secured to them by Article II Section 10 of the Colorado Constitution.

116. Unless the Court enters injunctive relief barring Defendants from implementing this deprivation of the Plaintiffs' rights, the Plaintiffs will continue to suffer irreparable harm.

**THIRD CLAIM FOR RELIEF**

Concerning Parade Denials  
Against Municipal Defendants  
(42 U.S.C. § 1983, Constitution of the United States)

117. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

118. As a result of their actions, as set forth above, in the denials of the Plaintiffs' requests for parade permits, both to the Pepsi Center during times when delegates will be present for the Convention, and to alternative locations at other times, the Municipal Defendants, while acting under color of state law, have deprived the Plaintiffs of their rights, privileges and

immunities secured to them by the Constitution and laws of the United States, entitling them to relief under 42 U.S.C. § 1983.

119. The denials of the Plaintiffs' parade requests are not narrowly tailored to serve the government's asserted interest in safety and security.

120. The denials of the Plaintiffs' parade requests fail to leave open ample alternative channels of communication, in that the communicative and symbolic value of parades that terminate or pass by the Pepsi Center within sight and sound of the Delegates and other attendees at the Convention, or to the other parade locations requested by certain of the Plaintiffs, cannot be replicated or even approximated by any other means of communication, either in other public forum spaces elsewhere in the city or through any other means of communication.

121. Plaintiffs have no adequate remedy at law to redress fully the Municipal Defendants' deprivation of the rights secured to them by the Constitution and laws of the United States.

122. Unless the Court enters injunctive relief requiring the Municipal Defendants to permit the Plaintiffs to conduct parades that terminate or pass by within sight and sound of the delegates at the Pepsi Center, or the other locations requested by certain of the Plaintiffs, the Plaintiffs will suffer irreparable harm

**FOURTH CLAIM FOR RELIEF**  
Concerning Parade Denials  
Against Municipal Defendants  
(Article II, Section 10 of the Colorado Constitution)

123. The foregoing paragraphs are incorporated herein by reference as if set forth in full.



124. As a result of their actions, as set forth above, the Municipal Defendants' denials of the Plaintiffs' requests for parade permits, both to the Pepsi Center during times when delegates will be present for the Convention, and to alternative locations at other times, will deprive the Plaintiffs of the rights secured to them by Article II Section 10 of the Colorado Constitution.

125. Plaintiffs have no adequate remedy at law to redress fully the Defendants' deprivation of these rights secured to them by Article II Section 10 of the Colorado Constitution.

126. Unless the Court enters injunctive relief requiring the Municipal Defendants to permit the Plaintiffs to conduct parades that terminate or pass by within sight and sound of the delegates at the Pepsi Center, or the other locations requested by certain of the Plaintiffs, the Plaintiffs will suffer irreparable harm.

### **Prayer for Relief**

WHEREFORE, the Plaintiffs pray that this Court take jurisdiction over this matter and enter Judgment in their favor, and against the Defendants, as follows:

- a. direct the Defendants to alter their already-announced plans so as to ensure their full compliance with the First Amendment to the Constitution of the United States and Article II, Section 10 of the Colorado Constitution, in at least the following respects:
  - 1) Change the size and location of the Public Demonstration Zone on the grounds of the Pepsi Center, so that persons standing in that zone will have actual "sight and sound" access to the Convention Delegates on the grounds of

the Pepsi Center, including to permit the use of an electrically-powered sound amplification system;

- 2) Change the parameters of the Public Demonstration Zone on the grounds of the Pepsi Center so that it can safely accommodate the numbers of individuals anticipated to be marching to the Pepsi Center during the Convention;
- 3) Bar the Defendants from conducting searches of persons or possessions where such searches are based on regarding a person's entry into the Public Demonstration Zone as "consent" to a search or as a waiver of rights protected by the Fourth Amendment or Article II, section 7 of the Colorado Constitution, and bar the Defendants from conducting any full searches of persons or property that are not based on reasonable individualized probable cause, or any pat-down frisks that are not based on reasonable individualized suspicion;
- 4) Allow for the distribution of leaflets, pamphlets, and other printed materials, either electronically or through other means, to the Delegates and other attendees who may wish to receive such materials;
- 5) Allow for parades that pass by the Pepsi Center along the south side of Chopper Circle and the adjoining east side of Ninth Street during times when Delegates are present;
- 6) Allow for the alternative parades requested by Recreate 68, to the federal courthouse on August 25, 2008, and by Escuela Tlatelolco, to Sunken Gardens Park on August 26, 2008, respectively; and,

- 7) To the extent the preceding alterations are not ordered, such other alterations in the Defendants' announced plans as will ensure that the Plaintiffs have ample alternative channels of communication that provide for a commensurate communicative and symbolic value in the speech activities they would otherwise be constitutionally privileged to conduct at any other time in these public forum spaces;
- b. enter and order awarding the Plaintiffs their reasonable attorneys fees and costs incurred in connection with this action pursuant to 42 U.S.C. § 1988 and all other applicable law; and
- c. grant the Plaintiffs such further and different relief as the Court may deem just and proper.

Respectfully submitted this 27th day of June, 2008

By: /s/ Christopher P. Beall

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Recreate 68,  
Rocky Mountain Peace & Justice Center,  
Tent State University,  
Troops Out Now Coalition and Larry  
Hales,  
and  
United For Peace & Justice**

**CERTIFICATE OF SERVICE**

Undersigned counsel for Plaintiffs certifies that on this 27th day of June, 2008, this **SUPPLEMENTAL AND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF** was filed with the Court and served on the counsel of record listed below through the Court's ECF-CM electronic filing system:

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