

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

AMERICAN CIVIL LIBERTIES UNION OF COLORADO,
AMERICAN FRIENDS SERVICE COMMITTEE,
AMERICAN INDIAN MOVEMENT OF COLORADO,
AMERICANS FOR SAFE ACCESS,
CODEPINK,
ESCUELA TLATELOLCO CENTRO DE ESTUDIOS,
LARRY HALES,
GLENN MORRIS,
RECREATE 68,
ROCKY MOUNTAIN PEACE & JUSTICE CENTER,
DAMIAN SEDNEY,
TENT STATE UNIVERSITY,
TROOPS OUT NOW COALITION, and
UNITED FOR PEACE & JUSTICE,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, COLORADO,
MICHAEL BATTISTA,
THE UNITED STATES SECRET SERVICE; and
MARK SULLIVAN,

Defendants.

**PROPOSED ORDER
ON STIPULATION REGARDING PARTIAL RESOLUTION OF
PLAINTIFFS' FIRST MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to the separately filed Stipulation Regarding Partial Resolution of Plaintiffs' First Motion for Preliminary Injunction, and finding good cause based thereon and on the material in the file to date, the Court hereby enters the following **ORDER**:

BACKGROUND

1. On May 1, 2008, Plaintiffs filed their Complaint for Injunctive Relief (Doc. #1), asserting claims based upon their desired free speech activities during the 2008 Democratic National Convention (“2008 DNC”), which will be held at the Pepsi Center in Denver, Colorado, from August 25-28, 2008. Plaintiffs also filed a First Motion for Preliminary Injunction (Doc. #2) (“Motion”) and requested expedited briefing

2. On May 2, 2008, the Court entered an Order (Doc. #9) directing the Defendants to respond to the Motion within ten business days of service. On May 15, 2008, (Doc. #18), the Court granted the Defendants’ Unopposed Motion for Extension of time, until May 23, 2008, in which Defendants must respond to the Motion.

3. Plaintiffs have requested as “interim relief” that the Court order Defendants to disclose information concerning (1) the issuance of parade permits and the designated parade route during the 2008 DNC; (2) the issuance of permits to use and the physical design and location of the so-called “Public Demonstration Zone”; and, (3) any other restriction on speech in all public forums (including the “Public Demonstration Zone”) during the 2008 DNC. Defendants deny any liability with respect to the allegations in Plaintiffs’ Complaint and the relief sought in Plaintiffs’ Motion.

4. The Parties¹ continue to disagree as to the merits of their claims and defenses.

¹ As used herein, the term “Parties” refers to all Plaintiffs and all Defendants. The municipal defendants Michael Battista and the City and County of Denver are referred to collectively as “the City.” The federal defendants Mark Sullivan and the United States Secret Service are referred to as “the Secret Service.”

5. Nevertheless, counsel for Plaintiffs and the City have been in active discussions since the Motion was filed in an effort to reach a compromise of Plaintiffs' request for "interim relief" or, at a minimum, to narrow the issues raised by Plaintiffs in their Motion.

6. The City has provided to Plaintiffs certain information and dates concerning parade permitting, the "Designated Parade Route" (which is to be a specified route provided by the City for marches to the Pepsi Center in connection with the 2008 DNC), and the location of and access to the "Public Demonstration Zone" (which is to be an area on the grounds of the Pepsi Center within sight and sound of the delegates on the Pepsi Center grounds where the public may assemble and exercise their free speech rights).

7. The Parties have stipulated to this information being disclosed and the City's commitments, except as limited below, and they are incorporated herein as the Order of the Court:

ORDER

8. With respect to the parade permits and route information sought by Plaintiffs, according to the plan stipulated by the Parties:

a. The City shall announce the specific street-by-street route of the Designated Parade Route on or before June 12, 2008, with the exception of the precise location of the terminus of the route (which terminus will, in any event, be within walking distance of the "Public Demonstration Zone" discussed below). This announcement of the Designated Parade Route, and any acceptance by the Plaintiffs of any offer to use of the Designated Parade Route, will be without prejudice to the right of the Plaintiffs thereafter to raise, if they so choose, arguments challenging the legal adequacy of the particular route chosen by the City, the number

of parades per day allocated for use of the Designated Parade Route, or any restrictions or plans incident to the specified parade route.

b. Since March 3, 2008, the City has been accepting Extraordinary Event Permit & License Request Forms (referred to herein "Requests") from organizations and individuals to use the Designated Parade Route and other routes on specific dates and times. Three organizations or individuals, all Plaintiffs here, have submitted Extraordinary Event Permit & License Request Forms that request an alternative parade route to a location in the downtown zone other than the Pepsi Center (referred to herein as "Alternative Requests"). Depending upon the location of the Designated Parade Route announced by the City, these organizations or individuals may or may not wish to conduct a parade along these alternative routes.

c. On or before June 12, 2008, the City will begin the process of allocating all Requests received by the City to use the Designated Parade Route.

d. On or before June 12, 2008, the City also will begin processing the three Alternative Requests previously submitted by certain Plaintiffs, so long as each of those Plaintiffs has, by that date, submitted to the City a completed Parade Permit application form, which form will be provided by the City for that purpose. The City will process these Parade Permit applications for alternative routes other than the Designated Parade Route according to the provision of Denver Rev. Mun. Code §§ 54-357, *et seq.*, with the exception of the time requirement set forth therein, as these applications will be processed by June 19, 2008, as further described below. These Plaintiffs also will be permitted, prior to June 19, 2008, to convert their Alternative Request into one for the Designated Parade Route, and to then be processed with the other such pending Requests.

e. The number of parades available along the Designated Parade Route on each day of the Convention will depend primarily on the size and duration of the parade(s) scheduled for each day. The City agrees to endeavor, in good faith, to provide for at least three daily parades along the Designated Parade Route.

f. All Requests to use the Designated Parade Route and all Alternative Requests that are converted into Parade Permit applications and that were submitted between March 3 and March 14, 2008, will be processed no later than June 19, 2008. If the City is not able to accommodate all of the pending Requests to use the Designated Parade Route (because of competing Requests for the same date and time), the City will conduct a "lottery" to select between all competing Requests. The "lottery" will be held on or before June 19, 2008, in accordance with the procedures set forth in the Extraordinary Event Declaration. The City shall notify counsel for each individual or organization no later than June 19, 2008, as to the whether their Request to use the Designated Parade Route or their Alternative Request has been approved.

g. Any individual or organization that has been approved to use the Designated Parade Route in accordance with the process described above will not be required to apply for or obtain a Parade Permit under Denver Rev. Mun. Code §§ 54-357, *et seq.*

h. The City will not charge any of the normally applicable fees to use the Designated Parade Route.

i. On June 20, 2008, after all pending Requests to use the Designated Parade Route and all previously submitted Alternative Requests have been processed in accordance with the provisions above, the City will begin accepting and processing additional Parade Permit Applications for parade routes other than the Designated Parade Route in the downtown zone

encompassed within the City's Extraordinary Event Declaration dated February 28, 2008. The City's processing of formal Parade Permit Applications will be carried out in accordance with the procedures of Denver Rev. Mun. Code §§ 54-357, *et seq.*

j. After the allocation of space on the Designated Parade Route is made through the "lottery" process described above, any remaining date and times available for use of the Designated Parade Route will be allocated in the following order: (1) to any group or individual who has heretofore filed an "Alternative Request" to conduct a parade in another location and is denied a Parade Permit in the other location, and wants to use the Designated Parade Route instead; and then (2) to anyone else who has submitted a Request to use the Designated Parade Route since March 14, 2008.

k. The City's processing of any formal Parade Permit application will be without prejudice to the right of any Plaintiff to raise, if they so choose, arguments challenging the legal adequacy of any restrictions imposed through the permitting process.

9. With respect to the information sought by Plaintiffs related to the physical design and location of the "Public Demonstration Zone," pursuant to the Parties' Stipulation, the Plaintiffs agree that the following announcements of plans by the City obviate the need for a judicial order requiring that such announcements be made. The Parties understand, however, that these announcements do not provide the full "interim relief" requested by the Plaintiffs with respect to the "Public Demonstration Zone," including disclosure of the particular parameters of, and restrictions within, the "Public Demonstration Zone."

a. The City will provide a "Public Demonstration Zone" on the Pepsi Center grounds that will be within sight and sound of the delegates on the Pepsi Center grounds.

b. The City will not require any permit for persons to enter the "Public Demonstration Zone."

c. The "Public Demonstration Zone" will be open to the public and no person or group of people will be given any specific allocation of time or priority within the "Public Demonstration Zone."

d. To protect the safety of persons in and around the "Public Demonstration Zone," the City may limit the number of persons allowed in the "Public Demonstration Zone" at any one time to maintain safe ingress and egress from the area.

e. All activities within the "Public Demonstration Zone" remain subject to valid City, State, and Federal laws.

10. The above-listed announcements with respect to the City's plans for the "Public Demonstration Zone" are without prejudice to the rights of the Plaintiffs to challenge the constitutionality of any plans or restrictions that the Defendants may seek to impose on or at the "Public Demonstration Zone."

Dated this _____ day of May, 2008.

IT IS SO ORDERED.

The Hon. Marcia S. Krieger
U.S. District Judge

Tendered and Approved as to Form:

/s Christopher P. Beall

Steven D. Zansberg
Christopher P. Beall
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
1888 Sherman Street, Suite 370
Denver, Colorado 80203
Tel: (303) 376-2400
szanserg@lsklaw.com
cbeall@lsklaw.com

/s Mark Silverstein

Mark Silverstein
Taylor Pendergrass
ACLU FOUNDATION OF COLORADO
400 Corona Street
Denver, Colorado 80218
Tel: (303) 777-5482
msilver2@att.net
tpendergrass@aclu-co.org

Attorneys for Plaintiffs

/s James M. Lyons

James M. Lyons
Michael D. Plachy
Alex C. Myers
ROTHGERBER JOHNSON & LYONS LLP
One Tabor Center, Suite 3000
1200 17th Street
Denver, Colorado 80202-5855
Tel: (303) 623-9000
Fax: (303) 623-9222
jlyons@rothgerber.com

*Attorneys for Defendants
The City and County of Denver, Colorado
and Michael Battista*

TROY A. EID
U.S. Attorney

/s Lisa A. Christian

Lisa A. Christian
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF COLORADO
1225 17th Street, 7th Floor
Denver, CO 80202
Telephone: 303-454-0100
Facsimile: 303-454-0404
Lisa.christian@usdoj.gov

*Attorneys for Defendants The United States Secret
Service and Mark Sullivan*