

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.

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

The Parties,¹ by and through their undersigned counsel, submit the following Stipulation Regarding Partial Resolution of Plaintiffs' First Motion for Preliminary Injunction, with the accompanying Proposed Order implementing this Stipulation.

¹ As used herein, the term "Parties" refers to all Plaintiffs and all Defendants.

Despite the Parties' disagreements on the merits of the various claims and defenses in this action, counsel for Plaintiffs and the City & County of Denver have been in active discussions since the Plaintiffs' First Motion for Preliminary Injunction ("Motion") was filed in an effort to reach a compromise of Plaintiffs' claims seeking "interim relief" or, at a minimum, to narrow the issues raised by Plaintiffs in their Motion. Although those discussions are ongoing, Defendants have provided to Plaintiffs certain information and dates concerning parade permitting, the designated parade route, and the location of and access to the "public demonstration zone."² A proposed Order is filed simultaneously herewith for the Court's consideration.

STIPULATION

The Parties stipulate to the following:

1. With respect to the parade permits and route information sought by Plaintiffs:
 - 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.

² For ease of reference in this Stipulation, the Parties use the term "Public Demonstration Zone." This designated area, however, is not an isolated zone by which the City will confine demonstrations. This public area is simply a designated location that will provide sight and sound access to the convention delegates, and is open to demonstrators, delegates, curious onlookers and others.

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.

2. With respect to the information sought by Plaintiffs related to the physical design and location of the "Public Demonstration Zone," 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.

3. 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."

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4. Pursuant to this Stipulation, the following aspects of the "interim relief" requested by Plaintiffs in the Motion have been resolved and need not be addressed by the Court other than through the entry of the Proposed Order:

- [An Order that] [d]irects the Federal Defendants immediately to provide to the City & County of Denver and any other necessary authority, but not necessarily to the Plaintiffs, all information necessary for the City to publicly announce its determination of parade regulations and the designated parade routes to the Convention [excepting the parade route terminus], and any other parade restrictions during the Convention . . . (Motion, p.2);

- [An Order that] [d]irects the Municipal Defendants, upon receiving the aforesaid information from the Federal Defendants, immediately to publicly announce the routes [excepting the terminus], 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 (Motion, p.3);

- [An Order that] [d]irects the Municipal Defendants, 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 (Motion, p.4); and

- [An Order that] [d]irects the Municipal Defendants, upon receiving the aforesaid information from the Federal Defendants, immediately to begin implementation of a permit application process for the use [of] any stage(s) or podium(s) at the "[public] demonstration zone" at the Pepsi Center during the Convention (Motion, p.3).

5. Thus, the Parties' Stipulation resolves all but one of the issues of "interim relief" in the Motion with respect to parade route and permit applications. The sole remaining open "interim relief" issue with respect to parades is the timing of the City's disclosure of the specific terminus of the Designated Parade Route.

6. The Parties' Stipulation does not resolve the following issues of "interim relief" requested in the Motion with respect to the "Public Demonstration Zone," which therefore remain to be decided by the Court:

- [An Order that] [d]irects the Federal Defendants immediately to provide to the City & County of Denver and any other necessary authority, but not necessarily to the Plaintiffs, all information necessary for the City to publicly announce . . . 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 "[public] demonstration zone" at or near the Pepsi Center, and any "soft-perimeter security zone" (Motion, p.2);

- [An Order that] [d]irects the Municipal Defendants, upon receiving the aforesaid information from the Federal Defendants, immediately to make public all restrictions that it will impose on the "[public] 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;
 - all provisions, restrictions, logistical arrangements, and hours of operation of a public address system and/or speaker's podium or stage in the zone (Motion, pp.2-3);
 - any additional regulations or restrictions that will apply to persons wishing to exercise their free speech rights in the zone (Motion p.3); and
- [An Order that] [d]irects the Municipal Defendants, upon receiving the aforesaid information from the Federal Defendants, immediately to 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. (Motion, p.3).

The Parties continue to engage in discussions concerning the "Public Demonstration Zone" and work toward an agreement that will fully resolve Plaintiff's Motion and obviate the need for the "interim relief" Plaintiffs seek. Until such time, however, Defendants anticipate filing a Response to Plaintiffs' remaining requests for injunctive relief on or before May 23, 2008, as directed by the Court's May 15, 2008 Order [Doc. #18].

Respectfully submitted this 22nd day of May, 2008.

/s Christopher P. Beall

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