

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Coleen Rowley, Ross Rowley, Ron DeHarpporte ,
Jodin Morey, Mikael Rudolph, and Impeach for Peace,

Court File No. _____

Plaintiffs,

vs.

COMPLAINT

The City of St. Paul, Mayor Chris Coleman,
St. Paul Police Chief John M. Harrington,
and Assistant St. Paul Police Chief
Matthew D. Bostrom,

Defendants.

Plaintiffs Colleen Rowley, Ross Rowley, Jodin Morey, Mikael Rudolph, Ron DeHarpporte and Impeach for Peace, for their claims against Defendants The City of St. Paul, Mayor Chris Coleman, St. Paul Police Chief John M. Harrington, and Assistant St. Paul Police Chief Matthew D. Bostrom, state and allege as follows:

INTRODUCTION

1. Beginning on September 1, the 2008 Republican National Convention (the “Convention”) will be held in Minnesota, located primarily at the Xcel Energy Center (the “Xcel Center”) in downtown St. Paul. At the Convention, the Republican Party will nominate its candidates to run for the offices of President and Vice President of the United States at the election to be held on November 4, 2008. The presumptive nominee of the Republican Party is John McCain, a Republican member of the United States Senate from the State of Arizona.

2. On information and belief, among and in addition to the 1,191 delegates to the Convention, many prominent members of the Republican Party will be in attendance at the Convention from time-to-time. On information and belief, attendees at the Convention will include many Republican Members of the House of Representatives, many Republican Members of the United States Senate, many Republican governors, legislators, and mayors from throughout the United States, as well as the President of the United States, George W. Bush, and possibly the Vice President of the United States, Dick Cheney.

3. As a result of both the principal purpose of the Convention, which is to nominate the Republican Party's 2008 candidates for President and Vice President of the United States, and the prominence of many of the attendees in the political and governmental affairs of the United States at a time when the nation is at war, facing many challenges throughout the world, and is suffering from a faltering economy and increasing unemployment and the attendant problems caused thereby, the Convention will attract worldwide media coverage along with thousands of delegates, government officials, campaign workers, lobbyists, and supporters.

4. Consequently, the Convention provides a unique and unparalleled opportunity of a type never before presented in the State of Minnesota as well as on a national and international level. The opportunity presented is for individual citizens of the State of Minnesota and other interested individuals and groups to exercise their rights to free speech, petition, and assembly by peacefully voicing their opinions on the pressing matters of these troubled times directly within sight and sound of the President, Vice President, Senators, Representatives, governors, legislators, mayors, delegates, government official and other political decision-makers and key opinion leaders within the

Republican Party who will attend the Convention. In addition it will give such individuals and groups an unparalleled opportunity, readily available nowhere else, to make their views known to the media gathered from around the world to cover the Convention, as well as to members of the public watching and reading media coverage of the Convention on the internet, television, radio, and in print.

5. Normally the streets and sidewalks of St. Paul, Minnesota in and near the site of the Convention are open to the public for all manner of activity, including the exercise of the rights of freedom of speech, freedom of petition, and freedom of assembly. Sidewalks and streets are the quintessential traditional public fora. On a typical day, individuals and groups wishing to peacefully express their views on the pressing matters of the day are able to do so in and around the sidewalks and streets surrounding the Xcel Center without government interference.

6. However, the Defendants herein have determined that during the Convention, certain areas in and around the Xcel Center will be closed to the public for security reasons. In addition, the Defendants herein have decreed that other areas in and around the Xcel Center will be closed to the public, including members of the public such as Plaintiffs who want to exercise their rights of freedom of speech, freedom of petition and freedom of assembly, in order to accommodate bus traffic and other transportation concerns, staging areas for the media and other aspects of the Convention, and other reasons that cannot and should not be constitutionally permitted to impinge upon the rights of the people to exercise their rights of free speech, petition and assembly.

7. Instead of permitting individuals and groups that wish to exercise their rights to do so in a manner in which they can be seen and heard by the people who they are trying to influence, in

those areas in and around the Xcel Center that are not necessary to meet legitimate security concerns, the Defendants have designated an inadequate and unacceptably small area as a “public viewing area.” In doing so, they have restricted the exercise by ordinary citizens and groups of their rights to free speech, assembly and petition to a narrow area in and around the Xcel Center during the Convention.

8. This complaint arises from designation by Defendants of a constitutionally deficient “public viewing area,” impermissibly restricting the rights of Plaintiffs and others without any legitimate significant governmental interest in doing so. Given the expected numbers of people wishing to exercise their rights, the likelihood that there may be a divergence of views, beliefs and messages among the persons wishing to exercise such rights, and the vagueness, arbitrariness, and uncertainty surrounding the details of the public viewing area, the Defendants’ designation of this area violates Plaintiffs’ rights under the Constitution of the State of Minnesota.

PARTIES

9. Plaintiff Colleen Rowley is an individual and resident of the State of Minnesota.

10. Plaintiff Ross Rowley is an individual and resident of the State of Minnesota.

11. Plaintiff Ron DeHarpporte is an individual and resident of the State of Minnesota.

12. Plaintiff Impeach for Peace is a grassroots, nonpartisan organization with chapters in twelve states throughout the country working to achieve the impeachment of President George W. Bush and Vice President Dick Chaney and holding them and future elected officials fully accountable under the Rule of Law.

13. Plaintiff Jodin Morey is an individual and a resident of the State of Minnesota. He is an officer and organizer with Plaintiff Impeach for Peace.

14. Plaintiff Mikael Rudolph is an individual and a resident of the State of Minnesota. He is an officer and organizer with Plaintiff Impeach for Peace.

15. Defendant City of St. Paul, Minnesota (“the City”) is a municipality organized under the laws of the state of Minnesota. The City will be hosting the Convention from September 1 through September 4, 2008.

16. Defendant Chris Coleman is the Mayor of the City of St. Paul. In his capacity as Mayor, Defendant Coleman exercises supervisory authority, under the color of state law, over the enforcement of the Legislative Code of St. Paul. Defendant Coleman also exercises supervisory authority, under the color of state law, over the St. Paul Police Department. Defendant Coleman is being sued in both his individual and official capacities.

17. Defendant John Harrington is the chief of the St. Paul Police Department. In his capacity as chief, Defendant Harrington exercises supervisory authority, under the color of state law, over the enforcement of the Legislative Code of St. Paul and over the St. Paul Police Department. Defendant Harrington is being sued in both his individual and official capacities.

18. Defendant Matthew Bostrom is an assistant chief of the St. Paul Police Department. Upon information and belief, Mr. Bostrom has been assigned principal authority over the St. Paul Police Department’s management of the Convention. In his capacity as chief, Defendant Bostrom exercises supervisory authority, under the color of state law, over the enforcement of the Legislative

Code of St. Paul and over the St. Paul Police Department. Defendant Bostrom is being sued in both his individual and official capacities.

JURISDICTION AND VENUE

19. This Court has jurisdiction to decide Plaintiffs' claims under the Constitution of the State of Minnesota pursuant to the Uniform Declaratory Judgments Act, Minn. Stat. §555.01, et seq.

20. Venue is proper with this Court under Minn. Stat. 542.03.

FACTUAL BACKGROUND

21. On December 10, 2007, Defendant Bostrom, appearing before the “Preparedness for Terrorism and Disasters Work Group” of the Minnesota Legislature, stated that he did not want to put protesters into a penned-in area, and testified that he did not intend to put protesters into a specific “footprint.” He further testified that “there’s going to be a lot of areas where you’re going to be able to walk in and around the Xcel Energy Center” during the Convention. (*See Exhibit A.*)

22. On February 28, 2008, a St. Paul Pioneer Press article quoted Defendant Bostrom as stating that protestors were going to be confined to a set area, characterized in the article as a “free speech zone.”

23. On February 29, 2008, the City posted on its web site a document titled “Guidelines Regarding the Conduct of Public Assemblies Pursuant to Section 366A of the Saint Paul Legislative Code in Certain Areas of the City of St. Paul, Minnesota Between September 1-4, 2008” (the “Guidelines”). (*See Exhibit B.*)

24. The Guidelines define a Primary Event Area surrounding the Xcel Center for the dates of the Convention and state that St. Paul Police Department will “designate certain streets and sidewalks in the Primary Event Area upon which public assemblies can be conducted.” The Guidelines reference attachments that would define the “Primary Event Area” (Attachment A) and the “Designated Public Assembly Area[s]” (Attachment B) but both attachments were blank other than to state that these areas were “[t]o be determined on or before May 31, 2008.” The Guidelines do not specify any rights to or restrictions on free speech activity with groups of fewer than 25 individuals in areas outside the “Designated Public Assembly Areas” but within the “Primary Event Area.” The Guidelines also do not specify the means of demarcation by which the “Designated Public Assembly Area[s]” will be identified; whether and to what extent security measures such as fencing or other barriers will obstruct the view of areas outside the “Designated Public Assembly Area[s],” and whether and to what extent physical access to the “Designated Public Assembly Area” will be controlled by means of fencing or other barriers around the perimeter of the area. In the Guidelines, the St. Paul Police Department “reserve[d] the right to modify and/or revise these guidelines, and any activities permitted pursuant thereto.” The Guidelines are signed by Defendant Bostrom.

25. The City has never issued “Attachment A” or “Attachment B” to the Guidelines to provide a definition of the “Primary Event Area” and “Designated Public Assembly Area[s].” It was only in the course of litigation regarding the constitutionality of a parade permit issued by the City that the City produced a document titled “Public Viewing Area.” This document purportedly clarified the boundaries of the Designated Public Assembly Area. (*See* Exhibit C). That area

included most or all of 7th Street W. between 5th Street W. and St. Peter and a triangle formed by 7th Street W., 5th Street W., and Old 6th Street W.

26. The majority of the presumed Designated Public Assembly Area will have limited or no sight and sound access to the Convention, those attending it, or the Xcel Center, as it extends several blocks away to St. Peter Street and contains sections that will be blocked by buildings and media parking lots from the convention and those attending it. One section of the Designated Public Assembly Area, the section closest to the Xcel Center, is a small triangle bordered by 5th Street W., Old 6th Street W., and 7th Street W. This section contains one point, the corner of 5th and 7th, that is diagonally across the street from the Xcel Center. It also contains two large planters that take up a significant amount of space close to the corner of 7th Street W. and 5th Street W., and over thirty trees that both limit available space in the area and also inhibit sight lines to the Xcel Center. Groups with march permits are being permitted to proceed with marches during the Convention that have routes that include almost the entirety of the Public Viewing Area. In addition, upon information and belief, many of the delegates and attendees at the Convention will be entering and leaving the Xcel Center from gates that have limited or no sight or sound access to any of the Designated Public Assembly Area.

27. Upon information and belief, Defendants have ceded almost all of the public streets and sidewalks in the vicinity of Xcel Center to a credential-only or “hard” security zone including streets and sidewalks South and West of Xcel Center to Chestnut St. and streets and sidewalks South of Seventh St. and West of St. Peter, including Hamm’s Plaza.

28. Plaintiffs in this action are individuals and organizations, with various, and in some cases differing, interests and messages, that wish to engage in political speech with meaningful sight and sound access to the persons attending the Convention, and who will presumably be expected to compete with each other and with other groups and individuals for the limited section of the Designated Public Assembly Area that has sight and sound access to the Convention.

29. On July 31, 2008, in a Minneapolis Star Tribune article, a representative of the St. Paul Police Department stated that there would also be a stage set up in the small triangle bordered by 5th Street W., Old 6th Street W., and 7th Street W. The stage, access to which will apparently be given on the basis of a lottery, will further dramatically limit the amount of space in the already limited section of the Designated Public Assembly Area that has sight and sound access to the Convention.

COUNT ONE

VIOLATION OF FREEDOM OF SPEECH AND DUE PROCESS – MINNESOTA CONSTITUTION

30. Plaintiffs incorporate herein paragraphs 1-25 above.

31. Defendants have issued Guidelines that are vague, arbitrary and overbroad and otherwise impermissibly infringe upon Plaintiffs' rights to free speech, petition, and assembly in violation of Article I, § 3 and Article I, § 7 of the Constitution of the State of Minnesota.

32. Defendants have issued Guidelines that are overbroad in that, among other things, the Guidelines impermissibly restrict speech without a showing of a legitimate significant governmental interest in violation of Article I, § 3 of the Constitution of the State of Minnesota.

33. Defendants issued Guidelines affecting Plaintiffs' freedoms of speech, petition and assembly without ensuring that Plaintiffs and other interested parties had notice and an opportunity for public comment and a public hearing, and the provisions in the Guidelines for further revision or modification of the Guidelines do not provide Plaintiffs or other interested parties with notice or an opportunity for public comment and a public hearing, in violation of Plaintiff's rights to due process under Article I, § 7 of the Constitution of the State of Minnesota.

34. Defendants have issued Guidelines that are arbitrary in that, among other things, Defendants have reserved the right to amend or modify the Guidelines at any time at their sole discretion and with no objective basis for doing so in violation of Article I, § 7 of the Constitution of the State of Minnesota.

35. Defendants have issued Guidelines that are impermissibly vague in violation of Plaintiffs' due process rights under Article I, § 7 of the Constitution of the State of Minnesota in that, among other things, the Guidelines fail to define the Designated Public Assembly Area[s] or the Primary Event Area and fail to provide guidance with respect to Plaintiffs' rights regarding free speech, petition, and assembly in areas within the Primary Event Area but outside the Designated Public Assembly Area.

36. Plaintiffs will be damaged by virtue of the above violations of their constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in favor of Plaintiffs and against Defendants, and each of them, jointly and severally, as follows:

A. Declaring that the Guidelines issued by Defendants violate Plaintiffs' free speech, petition, and assembly rights under Article I, Section 3 of the Constitution of the State of Minnesota and Plaintiffs' due process rights under Article I, Section 7 of the Constitution of the State of Minnesota;

B. Defining the Primary Event Area and Designated Public Assembly Areas and, in so doing, establishing additional and adequately sized areas for the exercise by the Plaintiffs of their constitutional rights of freedom of speech, petition, and assembly, on Kellogg Boulevard and on the portion of Seventh Street west of the Xcel Center within sight and sound of delegates and others attending the Convention as they embark and disembark from buses and as they enter the Xcel Center;

C. Prohibiting Defendants from interfering with, or otherwise regulating the exercise of freedom of speech, petition and assembly, including by modifying the Guidelines, except in a manner and to the extent as is specifically permitted by the Court, and requiring Defendants to provide such public safety resources as are necessary to permit Plaintiffs and others to use the streets and sidewalks of St. Paul for such purposes without interference;

D. Awarding Plaintiffs damages that will be incurred as a result of the above violations of their constitutional rights;

E. For such other, further or different relief as the Court may deem just and equitable.

DATED: _____, 2008.

MASLON EDELMAN BORMAN & BRAND, LLP

By: _____

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded to the party against whom the allegations in the pleading are asserted pursuant to Minn. Stat. ' 549.211, as amended.
