

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE DIVISION

Case No. _____

FLORIDA ALLIANCE FOR RETIRED
AMERICANS, BROWARD ANTI-WAR
COALITION, BROWARD COUNTY GREEN
PARTY, GREEN PARTY OF FLORIDA,
HAITI SOLIDARITY, and LAKE WORTH
FOR GLOBAL JUSTICE,

Plaintiffs,

v.

CITY OF FORT LAUDERDALE, a municipal
entity; and BROWARD COUNTY, a political
subdivision of the State of Florida,

Defendants.

**PLAINTIFFS' VERIFIED COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF FOR VIOLATION OF CIVIL RIGHTS
42 U.S.C. § 1983 AND FIRST AMENDMENT**

PRELIMINARY STATEMENT

This is a lawsuit seeking declaratory relief and injunctive relief for violation of Plaintiffs' First Amendment rights. Plaintiffs, comprised of organizations whose members are concerned about current social and economic issues affecting the region and the world, challenge several provisions of the Fort Lauderdale Municipal Code ("**FtL Code**" or "**Code**"), which impose onerous permit requirements on the right to engage in expressive activity in quintessential public fora in the City. In addition, Plaintiffs challenge provisions that make it a crime to be on a public sidewalk if it "annoys" or "obstructs" anyone else. Plaintiffs also challenge a recently enacted ordinance, entitled "Parade and Public Assembly Prohibitions," sweeping within its ambit conduct long held to be protected under the First Amendment. Finally, Plaintiffs challenge the "security perimeter" for the

upcoming Organization of American States (the “OAS”) ministerial meetings, prohibiting those who wish to make known their views on important issues of public concern at the OAS meetings from coming closer than a distance of approximately seven (7) football fields from the meeting site, at the nearest point.

JURISDICTION AND VENUE

1. This action seeks declaratory and injunctive relief pursuant to 42 U.S.C. §1983, for ongoing and threatened injury to the First Amendment rights of individuals and organizations engaged in lawful expressive activity within the City of Fort Lauderdale. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§1331 and 1343 and the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2201.

2. Venue is proper in the Southern District of Florida, Fort Lauderdale Division, under 28 U.S.C. §1391(b). All parties reside in the Southern District, all Defendants are located in the Fort Lauderdale Division, and all of the acts or omissions complained of herein have occurred or will occur in the Fort Lauderdale Division.

INTRODUCTION

3. The City of Fort Lauderdale (the “CITY”) employs a permit scheme for expressive activity in public fora that is both an unlawful prior restraint and an unreasonable time, place and manner regulation. Adopted in 1953, it requires a “license” for even a “minor outdoor event,” defined as a gathering of less than 500 people, with no minimum number. The ordinance imposes a lengthy advance filing requirement for protected expression, but is absolutely devoid of any standards to guide the decision of whether and under what conditions a permit will issue, how long public officials are allowed to decide a permit, how much insurance may be imposed, and what cost of security may be imposed on expressive activities. The absence of any standards in these key areas means that the ordinance vests public officials with unbridled discretion and invites content-based decisions based on the nature of the speaker. This is a forbidden basis on which to rest a permit scheme that requires a license to engage in protected speech. The fatal constitutional infirmities in the original permit scheme are compounded by the recently enacted emergency ordinance, distinguishing between speakers in public fora on patently content-based grounds. Finally, Defendants have announced plans for a mile-wide “security perimeter” around the site of the OAS meeting, keeping Plaintiffs out of sight and, no doubt, out of mind of the delegates. Each of these measures

violates Plaintiffs' First Amendment rights by limiting, impermissibly, their rights to speech, association, assembly and petition. For these reasons, Defendants' must be enjoined from prohibiting the lawful exercise of First Amendment rights in Fort Lauderdale and at the Convention Center during the OAS meetings.

PARTIES

Plaintiffs

4. Plaintiff **FLORIDA ALLIANCE FOR RETIRED AMERICANS** ("**FLARA**") is a not-for-profit corporation with an office in Wellington, Florida. Ex.1, Declaration of Tony Fransetta ("Fransetta Decl.") ¶2. **FLARA** is an affiliate organization of over ninety (90) groups of retired Floridians. *Id.* The combined membership of its affiliate groups is now over 192,000 persons. *Id.* **FLARA** provides its members with information about current social and political issues that directly affect the well-being of seniors. In recent years, it has been involved with issues relating to "free trade" agreement between nations because **FLARA** considers the flight of jobs and capital from this nation to be endangering the existence of many businesses in the U.S., thereby affecting the pension benefits and financial well-being of Florida's retirees. Ex. 1 [Fransetta Decl. ¶¶4-5]. As a result of the group's deep opposition to the Free Trade Area of the Americas ("FTAA"), in November 2003 **FLARA** expended thousands of dollars to bring busloads of retirees to Miami. Fransetta Decl. ¶6. There, approximately 1,000 members of **FLARA** joined in the march and rally sponsored by the AFL-CIO on November 20, 2003 at the amphitheater on Biscayne Blvd to protest the FTAA meetings and the proposed selection of south Florida as the site of the FTAA headquarters. Ex. 1 [Fransetta Decl. ¶¶6-9]. **FLARA** is once again intending to bring members to rally and demonstrate at the upcoming meeting of the OAS in Fort Lauderdale. Ex. 1 [Fransetta Decl. at ¶¶12-14].

5. Plaintiff **BROWARD ANTI-WAR COALITION** ("**BAWC**") is a non-partisan, unincorporated association in Broward County. **BAWC** was formed in 2001. Its goal is to further peace and social justice through nonviolent actions. Ex. 4 [Sanders Decl. at ¶4]. **BAWC** is one of the principal organizers for Alliance for Justice in the Americas ("**AJA**"), an umbrella organization of activist groups planning protest activities relating to the meeting of the OAS at the Broward Convention Center in early June, 2005. Ex. 6 [Smithers Decl. at ¶2]. In early May, **BAWC** submitted an Outdoor Events Application to the City of Fort Lauderdale on behalf of **AJA** and **BAWC**, seeking a permit from the City for a march and rally scheduled for June 5, 2005. Ex.6 [Smithers Decl. ¶3].

BAWC has been holding weekly vigils since May 2002 in front of the Federal courthouse in downtown Fort Lauderdale (corner of Broward Boulevard and Northeast Third Avenue) at 5 p.m. Ex.6 [Smithers Decl. ¶5]; Ex. 4 [Sanders Decl. ¶5]. **BAWC** has participated with other groups in events at the Torch of Friendship in downtown Miami, including an Inauguration Day protest, on January 20, 2005, a protest on the second anniversary of the Iraqi invasion, on March 19, 2005, and a May Day observance on May 1, 2005. *Id.* Protest activities in Broward have included a Tax Day protest of taxation for wars at the Broward Main Post Office on April 15, 2005, and a protest coinciding with the Air & Sea Show on April 30, 2005. *Id.* Most of these events have involved more than eight people, which would subject members of **BWAC** to the restrictions in the recently enacted emergency law regulating parades and “public assemblies,” Fort Lauderdale Code §26-202.1. The **BAWC** wants to set up a small tent “city” outside the OAS meetings to symbolize the struggles of indigenous peoples in the OAS member states, who live in substandard conditions. Ex. 6 [Smithers Decl. ¶11]. **BAWC** also wants to demonstrate with a cage to protest the torture of prisoners at Guantanamo. *Id.*

7. Plaintiffs **GREEN PARTY OF FLORIDA** and **BROWARD GREENS** (collectively “**GREENS**”) are chartered affiliates of the Green Party of the United States, a national political party recognized by the Federal Elections Committee. Ex. 7 [Steiner Decl. ¶2]. The Green Party espouses political action in accordance with its “Ten Key Values,” including: grassroots democracy; social justice; ecological wisdom; non-violence; decentralization; community-based economics & economic justice; gender equity; respect for diversity; personal & global responsibility; future focus and sustainability. Ex.7 [Steiner Decl. ¶4]. The **GREENS** oppose current and proposed regional trade agreements, such as the North American Free Trade Agreement (“NAFTA”), Free Trade Area of the Americas (“FTAA”) and the Dominican Republic/Central America Free Trade Agreement (“DR / CAFTA” or “CAFTA”). Ex. 7 [Steiner Decl. ¶5]. These agreements violate most of the precepts of the Green Party as they do not promote grassroots democracy or social justice, have weak environmental provisions, encourage by their terms centralization rather than decentralization, and hinder economic justice. *Id.* In November 2003, over a thousand Green Party members traveled to Miami from throughout Florida and the rest of the United States to demonstrate peacefully at the FTAA Ministerial Meetings. Ex. 7 [Steiner Decl. ¶6]. Approximately 300 to 600 members of the

Green Party are expected to attend the OAS march and rally on June 5th, and the Florida Green Party and the Green parties of Miami-Dade, Broward, and Palm Beach counties have endorsed the proposed protests against the OAS General Assembly organized by the Alliance for Justice in the Americas (“AJA”) outside of the Broward County Convention Center in early June, including a large demonstration on June 5. Ex. 7 [Steiner Decl. ¶7].

8. Plaintiff **HAITI SOLIDARITY** is a not-for-profit corporation with an office in Miami, Florida. Ex. 9 [Thompson Decl. ¶2]. **HAITI SOLIDARITY**’s purpose is to raise awareness in the United States regarding issues of democracy and human rights in Haiti, by participating in various educational and protest activities. Ex. 9 [Thompson Decl. ¶3]. **HAITI SOLIDARITY** has participated in numerous demonstrations throughout the South Florida area in the past several months, including a picket of the Miami-Dade Chamber of Commerce, at the Marriott hotel in downtown Miami, in April 2005, pickets of the Canadian and Haitian consulates in March and April of 2005, and several rallies at the Torch of Friendship on Biscayne Boulevard in downtown Miami. *Id.* There have been no arrests at any of these events, which have all been peaceful demonstrations. *Id.* Haiti is one of the member states of the OAS. **HAITI SOLIDARITY** takes the position is that the OAS has failed to take a strong position in support of democracy in Haiti and in opposition to the numerous human rights abuses occurring daily. Ex. 9 [Thompson Decl. ¶4]. Moreover, the group believes that the support of the OAS for free trade agreements such as the FTAA is contrary to the right of workers to organize unions and demonstrate, and the Haitian government continues to use arbitrary arrests and intimidation to preclude workers from organizing unions and demonstrating. *Id.* **HAITI SOLIDARITY** wants to reach representatives of the OAS nations to express its opposition to human rights abuses and anti-democratic political developments in Haiti, and to educate these persons regarding the need for implementation of protections for democracy and human rights. Ex. 9 [Thompson Decl. ¶6]. **HAITI SOLIDARITY** plans to join other groups in participating in the march and rally on June 5, 2005. *Id.*

9. Plaintiff **LAKE WORTH FOR GLOBAL JUSTICE (“LWGJ”)** is a collective committed to taking action for social justice whose members have engaged in numerous projects of a civic nature, including a variety of community-based activism. Ex. 8 [Stevens Decl. ¶3]. Lake Worth is located approximately 40 miles north of Fort Lauderdale. *Id.* Lake Worth for Global Justice

intends to participate in demonstrations at the OAS, scheduled for June 5th in Fort Lauderdale. Ex. 8 [Stevens Decl. ¶7]. LWGJ plans to stand on the sidewalk and in parks, to distribute literature before the June 5th demonstration. Ex. 8 [Stevens Decl. ¶8]. On June 5th, members of the group plan to bring banners, large puppets, stilt-walkers, and large signs to the Broward County Convention Center (“the **Center**”) area to protest the policies of the OAS. *Id.*

10. Defendant City of Fort Lauderdale (“**CITY**”) is a Florida municipal corporation. It is the legal and political entity responsible for the actions of the City Manager and the Fort Lauderdale Police Department (“**FLPD**”), which is a City department, and the officers and employees of these entities. The City is sued in its own right and on the basis of the acts of its officers, employees, and agents, which were taken pursuant to the City custom and policy.

Defendants

11. Defendant **BROWARD COUNTY** (“**COUNTY**”) is a political subdivision of the State of Florida. It is the legal and political entity responsible for the actions of the Broward County Board of County Commissioners (“**BBCC**”). It owns and operates through a third-party management company the “**Center**”, located within Port Everglades, Florida. The Center was built with the primary purpose of promoting and facilitating events and activities which generates substantial economic benefits for the County. **BBCC** also operates The **PORT OF THE EVERGLADES** (“**PORT**”), a seaport located within the cities of Fort Lauderdale, Hollywood and Dania Beach, and an unincorporated area of the **County**. The **PORT** is operated under the authority of the **BBCC**. Law enforcement for the **PORT** is contracted by the **COUNTY** with the Broward Sheriff’s Office (“**BSO**”), a constitutional office under the laws of the State of Florida.

GENERAL ALLEGATIONS

The OAS Meeting:

12. The **OAS** is scheduled to hold the 35th General Assembly of its member states from June 5 to 7, 2005 at the **Center**, located in the **PORT** and owned by Defendant **COUNTY**. The **OAS** is a global organization that brings together Western Hemisphere nations for the stated purpose to strengthen cooperation and advance common interests. The conference intends to address such as issues as “fulfilling the promise of the Inter-American Democratic Charter for all of the peoples of

the Americas; promoting a democratic culture, . . . improving the status of indigenous peoples; strengthening the inter-American human rights protection system; . . . and making 2006 the Inter-American Year of the Fight Against Corruption.” See *City of Fort Lauderdale - Organization of the American States General Assembly*, <http://ci.ftlaud.fl.us/oas/index.htm>.

13. In anticipation of the meeting, the City enacted an emergency ordinance, codified at FtL Code §26-202.1, imposing limits on demonstrators and supplementing existing ordinances, which are unconstitutional under long-standing United States Supreme Court precedents.

14. Defendants have also cordoned off a sweeping area “security perimeter” around the OAS meeting site (*i.e.*, the **Center**), preventing demonstrators from coming within 2000 feet of the **Center** at the closest point of the “security perimeter.” In effect, the entire **PORT** has been turned into a “no-protest” zone.

The Fort Lauderdale Code Provisions:

15. Fort Lauderdale has a largely antiquated permit scheme, adopted in 1953, which codifies laws repeatedly condemned as violative of First Amendment rights in quintessential public fora. The following sections of the Fort Lauderdale Code are challenged in this action:

a. **Fort Lauderdale Code §§ 15-181 to 15-185 “OUTDOOR EVENTS”:**

(1). FtL Code §15-181 requires a permit for any “outdoor events,” providing that:

(a) Outdoor events shall mean concerts, festivals, races, walks, . . . and other similar outdoor events, whether operated totally outdoors, on stage, under tents, or with the use of temporary buildings or structures, to which members of the public are invited as participants or spectators. Outdoor events shall not be permitted to locate or operate in the city except as provided in this article.

(2). FtL Code §15-182(a) provides that:

[t]he city commission may, after an application has been filed and reviewed, and after passage of an appropriate motion, permit events coming under the provisions of this article to operate within the city for temporary periods of time. Such application shall be filed not less than ninety (90) days in advance. . . . The city manager may establish a late fee to be imposed on applicants that file within such ninety-day period.

(3). FtL Code §15-182(b) provides that the City’s “parks and recreation department” to review and approve the application.” Once this is done, the City provides the

applicant with an agreement “incorporating the terms and conditions listed in section 15-183 and such other terms and conditions as the city may specify.”

(4). FtL Code §15-182 (c) provides that: [n]o person or organization shall hold an outdoor event prior to the delivery to the city of properly executed copies of the agreement and certificate of insurance provided for in this article.

(5). FtL Code §15-183 sets out the terms and conditions for an outdoor event. Specifically, requiring, *inter alia*, that:

(a) The police department may require the applicant to provide and pay for security personnel for crowd control and traffic direction purposes. Section §15-183(b)(6)

(b) The applicant shall provide a certificate of insurance satisfactory to the office of the risk manager, such insurance to be comprehensive general liability insurance in a minimum amount of one million dollars (\$1,000,000.00) . . . The applicant shall also agree to indemnify and hold harmless the city for any damage to person or property which might occur during or as a result of the operation of the outdoor event. Section §183(b)(7).

(6). FtL Code §§15-184 and 15-185 provide the exceptions from to the “outdoor event” permit requirement. Section 15-184(b) sets somewhat lower requirements for a “minor outdoor activity” in that: A “minor outdoor activity” means “an activity which will be attended by less than five hundred (500) persons, [and] have a limited impact on traffic, parking and noise A “minor outdoor activity sponsored by a charitable or non-profit organization or civic, neighborhood or homeowner association shall be exempted from the provisions of section 15-

183(b)(7) of this article.” [Exemption applies to insurance, indemnification and hold harmless, but not costs imposed by (b)(6).]. “The sponsor of a proposed minor outdoor activity shall submit all details of such proposed activity to the parks and recreation department at least thirty (30) days in advance of the event. Even a “minor outdoor activity,” however, is required to pay for costs of police protection and meet all advance-filing requirements.

b. Fort Lauderdale Code §16-71: “DISORDERLY CONDUCT”

(1). FtL Code §16-71(a) makes it an offense “for any person to commit an act of disorderly conduct” in the **CITY**.

(2). FtL Code §16-71(b) provides the definitions of “disorderly conduct.”
“A person shall be guilty of disorderly conduct if his conduct shall directly tend to or does create or cause public danger, alarm, disorder, nuisance, or if his conduct directly tends to or does create public danger, alarm, disorder, or nuisance and by such conduct he knowingly:”

(a). FtL Code §16-71(b)(1) makes

a disturbance of the public order by an act .
. [which] makes an improper noise, riot, disturbance, breach of the peace or diversion which directly tends to or does create a breach of the peace within the city; or collects with others in bodies or crowds for any purpose, in a manner which hinders, impedes or obstructs normal traffic along streets, sidewalks, or other public ways, and annoys or disturbs

other persons[.]

(b) Hinders, molests or annoys persons passing along a street, sidewalk, crosswalk or other public way. Section 16-71(b)(8)

(3). FtL Code §16-71(b)(8) provides an “*Exception.*” “This section shall not apply to peaceful picketing, public speaking or other constitutionally protected speech not in contravention of other laws.”

(4). FtL Code §16-71(e) expressly holds that a police officer may be a victim for the purposes of the “disorderly conduct” provisions.

(5). FtL Code §16-71(f) makes a violation of this Chapter punishable pursuant to section 1-6 of the Code, which provides for a penalty of \$1,000 dollars, up to sixty (60) days in jail, or both.

c. Fort Lauderdale Code §16-73: “Assemblies” makes it

unlawful for any persons to stand, congregate, or assemble upon any of the sidewalks or corners of the streets, or in, around or about the parks or other public places or buildings in this city to the annoyance of or hindrance to the passersby. It shall be the duty of the chief of police or any other officer under this direction to order all persons violating this section to move away or disperse. Whoever neglects or refuses to obey such order shall be punished as provided for in section 1-6 of this Code.

d. Fort Lauderdale Code §26-202: “Permits for parade, processions . . .”

provides that: “[n]o procession, or parade, excepting the forces of the United States Armed Services, the military forces of this state, and the forces of the police and fire departments, shall occupy, march, or proceed along any street or roadway except in accordance with the permission issued by the police chief and such other ordinances that may apply.”

e. April 19, 2005 Emergency Ordinance Adding Code §26-202.1 “Parade and Public Assembly Prohibitions”

On April 19, 2005, Defendant **CITY** adopted an emergency ordinance amending the Fort Lauderdale Municipal Code to add a new section, restricting possession of certain items only by persons participating in parades and assemblies, as those terms are defined in the new Code provisions. CODE §26-202.1. A violation of this provision is punishable by a fine of \$500, a sentence of 60 days in jail, or both. Sections 26-202.1(e) and 1-06.

(1). FtL Code §26-202.1(a)(1) defines a “Parade” as

a coordinated movement, except a coordinated movement directly associated with a practice or rite of a well-recognized bona fide religious sect or organization, of eight (8) or more pedestrians or vehicles upon the streets, within the city with an intent of attracting public attention that interferes with or has a tendency to interfere with the normal flow or regulation of traffic upon the street.

(2). FtL Code §26-202.1(a)(2) defines a “Public Assembly” as

a gathering, except a gathering directly associated with a practice or rite of a well-recognized bona fide religious sect or organization, outside a structure, of more than eight (8) persons for a common purpose at a public place within the City that continues in existence for more than thirty (30) minutes, with the intent of attracting public attention that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon any public facility, street, sidewalk, swale, alley, park recreation area or other place or building.

(3). FtL Code §26-202.1(b)(1)-(10) makes it unlawful for any person participating in a “parade” or “public assembly” from possessing various items, most of which are lawful in any other context. Section §26-202.1. Section 26-202.1(b) sets forth 10 limitations on materials and items that may be possessed by a participant in a parade or public assembly, as those terms were defined in the preceding section, including various weapons, the types of materials for signs and sign supports, etc. Most of these proscribed categories are so broad that they criminalize carrying a bicycle lock, an umbrella, a Swiss Army knife, a soft drink bottle, a baseball bat and other common items that are lawful unless the person is participating in a parade or assembly of more than

30 minutes in duration.

The “Security Perimeter” At the OAS Meeting Location

16. Defendants have announced a so-called “security perimeter” that shuts off physical access to a massive area adjoining the **Center**. Defendants, however, have not announced the final parameters of the “security perimeter,” including the perimeters of the area, or whether a “soft” area will be open to pedestrians, even if closed to vehicular traffic.

17. Although the final boundaries of the “security perimeter” have not been announced, the practical effect of the “security perimeter,” at it has been discussed publicly by law enforcement, is to create a “no-protest” zone unlike any ever see before. A map of the area, showing the proposed “security perimeter,” is attached at Exhibit 11. A video of the area is included at Exhibit 2c.

18. The proposed security zone is slightly more than one mile wide (west to east), with the distance of the western perimeter approximately 3/10 of a mile (from SE 15th Street to the **Center**), and the eastern buffer about 7/10 of a mile (from Mayan Drive to the **Center**). Ex. 2 [Keating Decl. ¶6]. Specifically, SE 15th Avenue, the western edge of the “security perimeter,” it is 1,012 feet to Eisenhower Blvd., 1,400 feet to the Port Yacht Club driveway, and 1,771 feet to the Causeway, just north of the **Center**. Ex. 2b

19. On the southern side, the **Center** is located within a 10' tall security fence. Ex. 2 [Keating Decl. ¶6]. The distance from the wall of the 17th Street Causeway to the **Center** Security Fence is 332 feet, greater than the length of a football field. The total length of the proposed OAS security perimeter on the western edge, from the SE 15th Avenue edge to the **Center** fence is 2,130 feet. Ex.2b.

20. The total length of the eastern side of the proposed “security perimeter” from Mayan

Drive to the **Center** fence is 4,188 feet. *Id.* On the remaining two sides, the **Center** is bounded by the Inland Waterway and, to the north by the Portside Yachting Center (“**PYC**”). *Id.*

21. Because of the land within the area designated as Port Everglades, all of which is within the “security perimeter,” it would not be possible for demonstrators from outside of the southern portion of the security zone to be seen or heard by their intended audience. Ex. 2 [Keating Decl. ¶6]; Ex. 4 [Sanders Decl. ¶9].

22. Defendant **CITY** has disseminated conflicting information about the “security perimeter” and other plans for a law enforcement response at the **OAS** meetings. In briefings for members of the business community, **FLPD** officers have stated that the plans that there is now no plan to shut down SE 17th Street, although the bridge will be restricted for vehicular traffic to exclude the need to search vehicles travelling on the bridge from June 4 to June 7 since that route will be driven by delegates to the **OAS** meetings at the **Center**. Ex. 3 [Morgan Decl. ¶5]. Members of the business community were also informed that by the **FLPD** supervisor that some **FLPD** officers had exaggerated the threat from demonstrators. *Id.* at ¶8.

Plaintiffs’ Application for a Permit to Demonstrate During the OAS Meetings

23. On May 3, 2005, Plaintiff **BAWC** submitted a permit application for an Outdoor Event to the Fort Lauderdale Parks and Recreation Department. Ex. 6 [Smither Decl. at ¶3]; Exhibit 6a. The original application sought approval for a march route, culminating in a rally in a large parking lot located adjacent to the **PYC** and the **Center**. *Id.*

24. On May 4, 2005, Plaintiffs sent an email to Sue Molnar, Outdoor Event Coordinator for the **CITY** Parks and Recreation Department, requesting that the **CITY** act on the permit within 48 hours. The 48-hour time limit was the length of time for acting upon applications set by Judge

Graham in a recent challenge to the City of Miami's parade and assembly permit scheme. *See Lake Worth for Global Justice, et al. v. City of Miami, et al.*, Case No. 04-20262-CIV-GRAHAM. Ex.12. Ms. Smither received a response email from Ms. Molnar, informing her that the application had been sent to the Police Department for review because of the nature of the activity being planned. Ex. 6 [Smither Decl. at ¶4]; Ex. 6b.

25. On May 6, 2005, Plaintiffs received a telephone call from Major Robataille of the **FLPD**, informing Ms. Smither that, while the march route was not a problem, the requested site for the rally was under the control of **COUNTY**. Major Robataille provided Ms. Smither with the contact numbers for the proper person with the **BSO** to contact about the requested site. Ex. 6 [Smither Decl. ¶5].

26. On May 9, 2005, Plaintiffs sent an e-mail to the Fort Lauderdale City Attorney and Chief Roberts of the **FLPD**, informing both of them of the messages left for the **BSO** and requesting a decision on the permit application by the close of business on May 9. Ex. 6 [Smithers Decl. ¶6]; Ex. 6c. On May 9, Plaintiffs also hand delivered a letter to Chief Cummings of the **BSO**, asking for use of the parking lot adjacent to the **Center** for a rally site and seeking information on the permit process, including any other government entities whose approval was required. Ex. 6 [Smithers Decl. ¶7]; Ex.6d.

27. On the evening of May 9, Plaintiffs received an email from **FLPD** Major Robataille, informing them that the City would not issue a permit for the march until and unless the **COUNTY** acted upon the request for the rally in the parking lot adjacent to the **Center**. Ex. 6 [Smithers Decl. ¶8]; Ex. 6e.

28. On May 10, Plaintiffs received a message from **BSO** Chief Cummings, stating that he

would be happy to work with **AJA** regarding the requested rally site. Ex.6 [Smithers Decl. ¶9]. Plaintiffs immediately returned the call, leaving a message for Chief Cummings and leaving the cellular telephone number for Ms. Smithers. *Id.* To date, no one from **BSO** has responded. *Id.*

29. On May 6, when the **AJA** learned that their first choice for a rally site was subject to approval by the **COUNTY**, Plaintiffs submitted a letter to **FLPD** Chief Bruce Roberts, supplementing their original application by requesting several additional sites for their planned activities during the **OAS** meetings, including a parking lot under the SE 17th Street bridge and the access road between SE 17th Street and the Portside Yachting Center. Ex. 5 [Schlackman Decl. ¶10]; Ex. 5E. No response has been received to the request for a permit from the **CITY** for either of the supplemental sites requested. Ex.5 [Schlackman Decl. ¶10].

30. Plaintiffs have attempted to ascertain who is responsible for issuing permits for expressive activity in the **CITY** and **COUNTY**. To this end, on May 9, 2005, Plaintiffs propounded a Public Records Request to the Defendant **CITY** asking for any guidelines used by the Parks and Recreation Department for consideration of permit applications. Ex. 5 [Schlackman Decl. ¶6]; Ex.5d. Plaintiffs received a response to this request, prepared jointly by Parks and Recreation and the **FLPD**, but no documents contained any guidelines. Ex.5e. Also on May 9, 2005, Plaintiffs propounded a Public Records Request to the **FLPD**, seeking guidelines used for consideration of permit applications. Ex. 5 [Schlackman Decl. ¶6]; Ex.5b. Plaintiffs' counsel, Mara Shlackman, received a telephone call on from Nancy Dzoba, Public Safety Communications Manager for the **FLPD**, advising the the **FLPD** has no policy or procedure governing issuance of permits for parades and assemblies because the **FLPD** does not issue such requests, even though the Parks and Recreation Department informed Plaintiffs on May 4 that their permit request had been forwarded to the **FLPD**

because the Parks Department did not handle such requests. Ex. 5 [Schlackman Decl. ¶6]; Ex. 6B. Ms. Dzoba advised that the office of the City Attorney be contacted for such information. *Id.* On May 16, 2005, Ms. Shlackman received a letter from Ms. Dzoba, repeating what had been stated in the telephone conversation of May 11, 2005. Ex. 5 [Schlackman Decl. ¶6]; Ex.5C. On May 11, 2005, Plaintiffs hand-delivered a Public Records Request to the **PORT**, seeking, *inter alia*, any guidelines established by the **PORT** and/or the **COUNTY** for consideration of permit applications for demonstrations, rallies, assemblies, and similar expressive activity. Ex. 5 [Schlackman Decl. ¶7]; Ex.5D. In response to this request, an Assistant County Attorney telephoned Ms. Shlackman and informed her that the **COUNTY** had no provisions relating to expressive activity at the **PORT**.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE FIRST AMENDMENT PURSUANT TO 42 U.S.C. §1983

By All Plaintiffs Against Defendant City of Fort Lauderdale

31. The allegations of paragraphs 1 through 30 are incorporated into the First Claim for Relief as though fully set forth herein.

32. Fort Lauderdale Code §§16-71(8), 16-73, §16-71(b)(1) and 25-4, violate the First Amendment as overbroad restrictions on the use of public fora that prohibits all “obstruction” of free passage on public sidewalks based, *inter alia*, on “annoyance” of pedestrians and would, necessarily, impose the risk of punishment for engaging in protected expressive activities in these fora, including picketing and protesting.

33. Fort Lauderdale Code §§15-181 through 15-184 and 26-202 violate the First Amendment as an impermissible prior restraint on expression in public fora. The ordinances impose an advance filing requirement for a license from the government to speak without providing adequate

standards to guide the exercise of discretion by public officials and without the necessary procedural safeguards to protect against content-based decision. They lack any standards for determining whether to grant or deny a permit request and how long public officials may take to consider a permit application, inviting content-based decision making and preventing review of denials and onerous conditions by delay.

34. Fort Lauderdale Code §§15-181 through 15-184 and 26-202 violate the First Amendment because they do not constitute a content-neutral reasonable time, place or manner restriction. The application of the ordinances may depend on the content of the speech and its terms are not narrowly drawn to avoid restricting more speech than is necessary to further the **CITY**'s compelling interests in regulating speech in public fora. Moreover, because the Code requires a license to engage in virtually any speech activities in archetypal public fora in the **CITY** and does not provide for “spontaneous” expressive activities in response to timely events, it leaves no ample alternatives for communication.

35. Fort Lauderdale Code §§15-181 through 15-184 and 26-202 violate the First Amendment as it imposes an unconstitutional condition on the issuance of a permit to engage in protected expression in traditional public fora in the **CITY** by requiring permittees to assume, in advance of the event, all liability not only for their own acts and omissions, but for the potentially unauthorized acts and omissions of third parties related to the expressive activity, and the acts and omissions of all **CITY** employees, including the violation of civil rights by the police.

36. Fort Lauderdale Code §§15-181 through 15-184 and 26-202 are unconstitutional as they vest public officials with the unbridled discretion to make content-based decisions to grant, deny, or impose burdensome conditions on a permit to engage in core expression in quintessential public

fora.

37. Fort Lauderdale Code §26-202.1 violates the First Amendment because it does not constitute a content-neutral reasonable time, place or manner restriction. The application of the ordinance may depend on the content of the speech and its terms are not narrowly drawn to avoid restricting more speech than is necessary to further the **CITY**'s compelling interests in regulating speech in public fora.

38. Defendant **CITY**'s ordinance set forth above violate Plaintiffs' rights to freedom of speech, freedom of assembly, freedom of association and freedom to petition the government for redress of grievances, all rights protected by the First Amendment and made applicable to the states and local government by the Fourteenth Amendment and 42 U.S.C. §1983. The acts complained of herein were directed toward intimidating Plaintiffs and others who intend to engage in lawful expressive activity, chilling the exercise of these protected expressive rights by, among other means, deterring Plaintiffs and others from associating in the lawful exercise of their constitutional rights.

39. As a consequence of these actions, Plaintiffs and others fear they will be impeded in their efforts to carry out lawful expressive activities in conjunction with the OAS meetings and are impeded in their ability to organize for, and carry out, the demonstrations and other activities to protest globalization, job loss and other issues related to the OAS meeting. They are at risk of not being able to communicate their message if the ordinances are enforced. Accordingly, Plaintiffs have and will suffer injury as a result of Defendants' unconstitutional policies and enforcement conduct.

40. There is an actual controversy now existing between the Plaintiffs and the Defendant **CITY** concerning the permitting scheme in Fort Lauderdale and the "security perimeter" around the OAS meeting site, including whether and under what conditions a permit will issue, what "security" and insurance costs will be imposed, when a permit will be decided, and whether groups as small as

eight (8) will be subjected to additional restrictions if they are in a public place, to protest with a “common purpose,” for more than 30 minutes. Plaintiffs seek a judicial determination of their rights and duties and a declaration as to defendants’ obligations regarding lawful expressive activities.

41. Plaintiffs plan to engage in expressive activity in the City of Fort Lauderdale, including in the area surrounding the **Center**, in the immediate future. As a result of these unconstitutional ordinance regulating core speech, Plaintiffs reasonably believe that future demonstrations, including those planned for the upcoming **OAS** meeting, will result in constitutional violations. Absent relief from this Court, Plaintiffs will suffer irreparable harm. Their speech and petition rights, particular their ability effectively to convey their message to the public) will be violated. Plaintiffs face an actual and concrete threat of imminent future violation of their First Amendment free speech rights.

SECOND CLAIM FOR RELIEF

VIOLATION OF FIRST AMENDMENT BY EXCLUSIONARY SECURITY PERIMETER

By All Plaintiffs Against All Defendants

42. The allegations of paragraphs 1-30 are incorporated into the Second Claim for Relief as though fully set forth herein.

43. Defendants’ proposed “security perimeter” is a prior restraint and violates the First Amendment as it would bar lawful expressive activity in traditional public fora.

44. Defendants’ proposed “security perimeter” violates Plaintiffs’ First Amendment rights as it is not a reasonable time, place or manner regulation.

45. Defendants’ proposed “security perimeter” described above violates Plaintiffs’ rights to freedom of speech, freedom of assembly, freedom of association and freedom to petition the government for redress of grievances, all rights protected by the First Amendment and made applicable to the states and local government by the Fourteenth Amendment and 42 U.S.C. §1983.

The acts complained of herein were directed toward intimidating Plaintiffs and others who intend to engage in lawful expressive activity, chilling the exercise of these protected expressive rights by, among other means, deterring Plaintiffs and others from associating in the lawful exercise of their constitutional rights.

46. As a consequence of these actions, Plaintiffs and others fear they will be impeded in their efforts to carry out lawful expressive activities in conjunction with the OAS meetings and are impeded in their ability to organize for, and carry out, the demonstrations and other activities to protest globalization, job loss and other issues related to the OAS meeting. They are at risk of not being able to communicate their message if the sweeping “security perimeter” is allowed to be enforced. Accordingly, Plaintiffs have and will suffer injury as a result of Defendants’ unconstitutional policies and enforcement conduct.

PRAYER FOR RELIEF

Plaintiffs request relief as follows:

1. A temporary restraining order, preliminary and permanent injunction, enjoining Defendant **CITY**, its officers, agents and employees, from enforcing Fort Lauderdale Municipal Code §§15-181 through 15-184; 16-71(8); 16-73; 16-71(b)(1); 24-5; 26-202 and 26-202.1;

2. A temporary restraining order, preliminary and permanent injunction, enjoining Defendants, their officers, agents and employees, from enforcing the “security perimeter,” as presently planned to exclude Plaintiffs from being in sight or sound of the Broward Convention Center;

3. For a declaration that Defendants’ challenged ordinances violate Plaintiffs’ rights to free speech, assembly, association and to petition the government for redress of grievances, under the First Amendment to the United States Constitution;

4. For costs of suit pursuant to 42 U.S.C. §1920 and 42 U.S.C. §1988;

5. For attorneys' fees pursuant to 42 U.S.C. §1988;
6. For such other relief as this Court deems just and proper.

DATED: May 19, 2005

Respectfully Submitted,

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VERIFICATION

I, TONY FRANSETTA , declare:

1. I am a member of the Plaintiff FLORIDA ALLIANCE FOR RETIRED AMERICANS. I submitted a declaration in support of the temporary restraining order and preliminary injunction that sets out the facts set forth in the Complaint and in the Statement of Facts in the Memorandum. I have personal knowledge of those facts, except for those facts based on information and belief and as to those facts, I believe them to be true.

2. I have read the Complaint filed in this action and am familiar with the factual matters set forth in the pleading. I verify that these facts are true and correct.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on May __, 2005 at _____, Florida.
