

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MORATORIUM NOW!, a Non-Profit
Organization; CHERYL LABASH;
THOMAS MICHALAK; JOAN MANDELL;
and WALLIS ANDERSEN,

Plaintiffs,

v.

DETROIT 300 CONSERVANCY,
a Michigan Non-Profit Corporation,
ROBERT F. GREGORY, in his official
capacity as President of Detroit 300 Conservancy;
HEATHER BADRAK, in her individual capacity;
GUARDSMARK, a Delaware limited liability
company; GENE DOE, a Guardsmark security guard,
in his individual capacity; JOHN DOE, a Guardsmark
security guard, in his individual capacity; and
SERGEANT THOMAS TAYLOR, a City of Detroit
police officer, in his individual capacity.

Case No. 15cv10373

Hon. Bernard A. Friedman

Defendants.

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FIRST AMENDED COMPLAINT

INTRODUCTION

1. Throughout our nation's history, public parks have been the quintessential traditional public forum – a place where the protection of freedom of speech and expression is at its zenith.

2. Self-advertised as “Detroit’s Gathering Place,” downtown Detroit’s Campus Martius is a public park that was created for all individuals to use and enjoy.

3. Although Campus Martius Park is publically owned, the management of the park has been outsourced to a private entity, Detroit 300 Conservancy. Because managing a public park is a public function, Detroit 300 Conservancy must perform its duties in a constitutional manner.

4. However, the Conservancy unconstitutionally banned core First Amendment activities such as passing out flyers and petitioning in the park. It also unconstitutionally barred small groups of protestors from walking through the park and distributing leaflets in a non-disruptive manner at times when there are no other organized activities.

5. To enforce its unconstitutional ban, Detroit 300 Conservancy hired Defendant Guardsmark to provide private security guards to patrol Campus Martius Park. Working jointly with Detroit 300 Conservancy to carry out the public function of managing the park, Guardsmark and its employees deprived

Michiganders of their ability to exercise their First Amendment freedoms in a public forum. Specifically, Guardsmark security guards prevented Plaintiffs from distributing political literature, seeking signatures on political petitions and marching silently through Campus Martius.

6. Members of the Detroit Police Department also enforced the unconstitutional restrictions on First Amendment rights at Campus Martius. For example, Defendant Thomas Taylor, a sergeant with the Detroit Police Department, told Plaintiffs that while Campus Martius is a public park where they ordinarily have the right to petition and distribute political literature, they must stop when instructed to do so by Detroit 300 Conservancy and its agents.

7. Because of Defendants' actions, Plaintiffs ceased exercising their rights to engage in political discourse in Campus Martius Park.

8. Plaintiffs therefore bring this civil rights action under the First and Fourteenth Amendments of the United States Constitution, as enforceable through 42 U.S.C. § 1983, seeking a declaratory judgment, an injunction and other relief.

JURISDICTION AND VENUE

9. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking relief for the deprivation of rights secured by the United States Constitution.

10. Venue is proper in the Eastern District of Michigan pursuant to 28

U.S.C. § 1391(b), because it is the judicial district where Plaintiffs and Defendants are located or reside, and where the majority of the events and omissions giving rise to this action occurred.

PARTIES

11. Moratorium Now! is a Detroit-based organization dedicated to ending foreclosures, evictions, and utility shutoffs.

12. Plaintiff Cheryl LaBash is a resident of Detroit, Michigan.

13. Plaintiff Thomas Michalak is a resident of Redford Township, Michigan.

14. Plaintiff Joan Mandell is a resident of Royal Oak, Michigan.

15. Plaintiff Wallis Andersen is a resident of Royal Oak, Michigan.

16. Defendant Detroit 300 Conservancy is a registered 501(c)(3) non-profit corporation located in Detroit, Michigan.

17. Defendant Robert F. Gregory is sued in his official capacity as President of Detroit 300 Conservancy. Upon information and belief, Mr. Gregory resides within the Eastern District of Michigan.

18. Defendant Heather Badrak is the Business and Operations Manager of Detroit 300 Conservancy. She is sued in her individual capacity. Upon information and belief, Ms. Badrak resides within the Eastern District of Michigan.

19. Defendant Guardsmark is a company headquartered in New York

with offices located in the Eastern District of Michigan. It contracted with Detroit 300 Conservancy to provide security services in Campus Martius until May 1, 2014, when Detroit 300 Conservancy terminated the contract.

20. Defendant Gene Doe is a security guard employed by Defendants Guardsmark and Detroit 300 Conservancy. While he identified himself as “Gene” to Plaintiffs, Plaintiffs do not yet know his last name and “Doe” is a pseudonym. When his last name is learned through discovery, Plaintiffs will seek to amend this complaint to list his full name. Gene Doe is sued in his individual capacity.

21. Defendant John Doe is a security guard employed by Defendants Guardsmark and Detroit 300 Conservancy. Plaintiffs do not yet know his actual name and “John Doe” is a pseudonym. Plaintiffs will seek to amend this complaint to list his actual name when it is learned through discovery. John Doe is sued in his individual capacity.

22. Defendant Thomas Taylor is a police officer employed by the City of Detroit. He is sued in his individual capacity.

FACTUAL ALLEGATIONS

Campus Martius Park is a Publicly Owned Park that is Managed by a Private Entity

23. Public parks are traditional public forums.

24. Campus Martius is a municipally owned public park located in the

center of downtown Detroit at the intersection of Woodward Avenue, Michigan Avenue, Fort Street, Monroe Street and Cadillac Square.

25. Originally built in the early 1800s, Campus Martius is the point of origin for the state's mile road system so that, for example, Eight Mile Road is exactly eight miles from the park and Nine Mile Road is exactly nine miles from the park.

26. The Campus Martius district and the surrounding area has a rich history of being a focal point of political expression in Detroit and in Michigan.

27. Due to its central location and layout, pedestrians often walk through Campus Martius Park on its sidewalks when walking to their downtown destination.

28. The sidewalk around the perimeter of Campus Martius Park is also a publicly owned area that looks and feels like a typical public sidewalk.

29. This sidewalk is used for general pedestrian passage and seamlessly connects to the nearby publicly managed sidewalk through a public crosswalk.

30. There are no barriers or other physical boundaries that indicate the sidewalk surrounding Campus Martius Park has a different legal status than other nearby sidewalks.

31. On July 23, 2003, Detroit 300 Conservancy entered into a "Professional Services Agreement" (PSA) for the management, maintenance, and

operation of Campus Martius Park.

32. In the PSA, Campus Martius Park is characterized as “a public space owned by the City” and a “Town Square.”

33. In addition, the PSA provides that Detroit 300 Conservancy “shall comply with and shall require its Associates to comply with all applicable federal, state and local laws pertaining to the performance of the Services.”

34. The PSA also states, “The City and the Conservancy shall develop and mutually agreed upon a system of rules and regulations for the operation and use of the Park.”

35. The PSA further provides, “The City shall provide police presence in and around the Park. The number of police officers and the manner of patrol will be determined solely by the Detroit Police Department. It is expressly acknowledged by the parties that the Conservancy shall have no responsibility for security within the Park.”

36. On its website, Detroit 300 Conservancy describes Campus Martius Park as a “public space in the heart of Downtown Detroit” and states that Campus Martius Park is “the most active pedestrian place in downtown Detroit year-round” and will be “a showcase for the City’s diverse culture,” “an active space like other great urban parks and plazas, dedicated to bringing people together,” a “community gathering place,” and a “place where everybody comes and is

welcome.”

37. Because the management and operation of a public park is a public function, state and federal constitutional requirements apply to Detroit 300 Conservancy, as well as its officers and employees, when managing, maintaining and/or operating Campus Martius Park.

38. After entering into the PSA, Detroit 300 Conservancy developed and implemented a set of rules for visitors of Campus Martius Park that it posts on its website and inside the park.

39. As President of Detroit 300 Conservancy, Defendant Robert Gregory is responsible for the development and implementation of the park rules.

40. Detroit 300 Conservancy employed the private security company Guardsmark to enforce these rules at the time the events that gave rise to this case occurred.

41. Detroit 300 Conservancy also relied upon City of Detroit police officers to enforce these rules.

42. When enacting and enforcing these rules for the facilities and spaces in and around Campus Martius Park, Detroit 300 Conservancy and its officers and employees are state actors performing a function that has traditionally been the exclusive prerogative of the government.

43. When Guardsmark enforced the park rules, Guardsmark and its

officers and employees were state actors and performing a function that has traditionally been the exclusive prerogative of the government.

Defendants Prohibited Plaintiffs Moratorium Now!, LaBash and Michalak from Passing Out Political Handbills and Petitioning in Campus Martius Park

44. Formed in 2007, Moratorium Now! is an organization of grassroots activists and organizations that works to stop foreclosures, evictions, and utility shutoffs in and around Detroit.

45. Members of Moratorium Now! frequently distribute flyers to raise awareness about the political issues in which they are involved.

46. Members of Moratorium Now! also frequently gather signatures for petitions and attend town hall meetings in an effort to influence public policy.

47. Plaintiffs Cheryl LaBash and Thomas Michalak are members of Moratorium Now!.

48. On the evening of February 13, 2014, Mr. Michalak posted a “tweet” on the social media site Twitter encouraging activists to come to Campus Martius the following day for a demonstration about the Detroit bankruptcy. The same evening, Ms. LaBash, under the auspice of Moratorium Now!, posted a “tweet” on Twitter explaining that supporters were going to meet at Campus Martius on February 14, 2014, to distribute flyers and circulate a political petition.

49. The flyer advertised a town hall meeting on March 2, 2014 to discuss

the Detroit bankruptcy and was entitled: Defend Detroit City Pensions and Services -- Make the Banks Pay.

50. The petition was titled, "Investigate and Prosecute the Banks Now! Make the Banks Pay for Destroying Our Neighborhoods!"

51. Ms. LaBash is a retired employee with the City of Detroit.

52. During her employment with the City of Detroit, Ms. LaBash assisted in the renovations of downtown Detroit that allowed the current configuration of Campus Martius Park to be built.

53. As a result of Detroit's bankruptcy, Ms. LaBash's pension and benefits from her employment with the City of Detroit were significantly reduced.

54. Moratorium Now! also created a Facebook event page for this flyering and petitioning event.

55. On Friday, February 14, 2014, Ms. LaBash, Mr. Michalak, and two other Moratorium Now! supporters went to Campus Martius Park on behalf of Moratorium Now! to participate in the flyering and petitioning event.

56. Upon arrival, Ms. LaBash and Mr. Michalak noticed several police cars parked at Campus Martius Park.

57. LaBash, Michalak and the other Moratorium Now! supporters began to petition and distribute political handbills on the sidewalk in the southern end of the park, on the sidewalk next to the historic Soldiers' and Sailors' Monument.

58. Soon after these activists began petitioning and leafleting, a Guardsmark security guard who identified himself only as “Gene,” asked them to leave the park.

59. Gene, referenced as “Defendant Gene Doe” in this complaint, informed Michalak and the Moratorium Now! supporters that he worked for Detroit 300 Conservancy.

60. Gene Doe then told Michalak and the Moratorium Now! supporters that they were prohibited from any political flyering or petition gathering because Campus Martius was private property.

61. Gene Doe also stated that pursuant to the park rules, the group risked arrest if they continued to pass out flyers and gather signatures.

62. The park rules completely prohibited soliciting and the distribution of handbills.

63. The distribution of political handbills and circulation of political petitions are activities protected by the First Amendment of the United States Constitution.

64. The park rules also stated that “Patrons of Campus Martius Park are subject to the rules of the City of Detroit Department of Parks and Recreation.”

65. One of the Moratorium Now! supporters explained to Gene Doe that she believed she could pass out leaflets in Campus Martius because it was a public

park.

66. Gene Doe informed the group that leafleting was a form of solicitation prohibited by the park rules.

67. Gene Doe also stated that the park rules could be imposed because Campus Martius Park was “open to the public but privately owned.”

68. Gene Doe then explained that Defendant Heather Badrak, the business and operations manager of Detroit 300 Conservancy, was responsible for determining what activities were permissible at the park.

69. At the urging of the Moratorium Now supporters, Gene Doe contacted Ms. Badrak.

70. Ms. Badrak reiterated that LaBash, Michalak and the Moratorium Now! supporters were not allowed to distribute literature or gather signatures in Campus Martius Park.

71. Gene Doe further informed Mr. Michalak that Detroit police officers were parked nearby because “a little bird” had informed Defendant Guardsmark that there would be political activists in the park.

72. Gene Doe stated that the officers were stationed there to ensure that Plaintiffs and others did not engage in advocacy prohibited by Detroit 300 Conservancy.

73. Upon information and belief, Gene Doe knew that political activists

were going to be at the park because of a formal or informal arrangement between Defendant Detroit 300 Conservancy, Defendant Guardsmark and a surveillance center operated by Rock Ventures LLC or one of its subsidiaries to monitor activities at Campus Martius and other places downtown.

74. On information and belief, Rock Ventures LLC or one of its subsidiaries operates a surveillance center in downtown Detroit where individuals monitor the social media of local activist organizations and monitor the video from the dozens of private security cameras around downtown Detroit.

75. On information and belief, the surveillance center alerted Defendants Detroit 300 Conservancy and Guardsmark that supporters of Moratorium Now! would be attempting to distribute political literature about the Detroit bankruptcy in Campus Martius Park on February 14, 2014.

76. On information and belief, Defendants planned and worked in concert to have a Guardsmark security guard and officers from the Detroit Police Department patrol Campus Martius Park at the time of the political event in order to help prevent Moratorium Now! and their supporters from engaging in political activity at Campus Martius.

77. Gene Doe informed Michalak and the Moratorium Now! supporters that they could discuss their concerns with nearby Detroit Police Department officers.

78. Michalak and the Moratorium Now! supporters then moved across the street to speak with a City of Detroit police officer in his vehicle.

79. The City of Detroit police officer stated that the security guard was correct and that they could not distribute flyers or gather petition signatures in the park.

80. The same police officer further stated that he was stationed there in order to ensure that Moratorium Now! did not engage in these types of political activities.

81. This police officer then called his supervisor, Defendant Thomas Taylor, a sergeant in the Detroit Police Department, who subsequently came to Campus Martius Park.

82. Sergeant Taylor told LaBash, Michalak and the Moratorium Now! supporters that the police were near Campus Martius Park because they had received “intel” about the nature of Moratorium Now’s flyers.

83. Sergeant Taylor further stated that although the park is public, it is privately managed and therefore members of the group could not be in the park if prohibited by Detroit 300 Conservancy.

84. Sergeant Taylor recommended that the activists pursue their activities on the traffic median across the street from Campus Martius.

85. In making these statements, Sergeant Taylor made a deliberate choice

to affirmatively enforce the unconstitutional policy imposed by Detroit 300 Conservancy.

86. LaBash, Michalak and the other Moratorium Now! supporters feared arrest and therefore complied with Defendants' orders to stop petitioning and distributing flyers and left Campus Martius.

87. Defendants Detroit 300 Conservancy and Gregory maintain a policy, practice or custom of banning individuals from distributing political flyers in the park.

88. Until its contract with Detroit 300 Conservancy was terminated on May 1, 2014, Defendant Guardsmark maintained a policy, practice or custom that banned individuals from distributing political flyers in the park.

89. Defendants Detroit 300 Conservancy and Gregory maintain a policy, practice or custom of banning petitioners from asking individuals to sign petitions in the park.

90. Until its contract with Detroit 300 Conservancy was terminated on May 1, 2014, Defendant Guardsmark maintained a policy, practice or custom that banned petitioners from asking individuals to sign petitions in the park.

91. Because of the park rules that were in effect, Ms. LaBash and Mr. Michalak did not make further attempts to distribute flyers or gather petition signatures in Campus Martius Park.

92. Ms. LaBash and Mr. Michalak did not distribute flyers or gather petition signatures in Campus Martius Park because they feared arrest if they engaged in this expressive activity.

93. As a direct and proximate result of Defendants' actions, Ms. Labash and Mr. Michalak suffered the following injuries, among others:

- a. Shock, outrage and emotional distress for being told they could not exercise their right to free speech in a public park;
- b. Fear and emotional distress of being arrested on February 14 and fear of returning to the park to exercise their rights;
- c. Emotional distress stemming from inability to spread their political message to people at Campus Martius and inability to collect signatures at Campus Martius;
- d. Outrage and frustration stemming from the fact that private entities are preventing them from engaging in political speech at a public park.

94. As someone who played a role in the construction of Campus Martius, Ms. LaBash was particularly shocked, distressed, and outraged that Defendants would not allow her to exercise her First Amendment rights at Campus Martius.

95. As an organization, Moratorium Now! also did not distribute flyers or circulate petitions in Campus Martius Park because of fear that its members would

be arrested.

96. Because of Defendants' actions, Moratorium Now has been deterred from circulating petitions or distributing flyers at Campus Martius and encouraging the multitude of citizens who convene at Detroit's Gathering Place to support its positions on various issues.

97. Defendants' actions also prevented Moratorium Now! from disseminating its views about the City of Detroit's bankruptcy to park patrons in Campus Martius for the remainder of the bankruptcy proceedings.

98. This created a hardship for Moratorium Now as there was not a similar spot in Downtown Detroit where it could so effectively interact with others and share its political message.

Defendants Prohibited Plaintiffs Mandell and Andersen from Walking Through Campus Martius Park in Political Protest and Distributing Political Handbills

99. Every month, individuals associated with Women in Black-Detroit hold an hour-long silent vigil and march in a public area to protest domestic and world-wide violence sanctioned by policies of the United States.

100. Plaintiffs Joan Mandell and Wallis Andersen are part of Women in Black-Detroit and regularly participate in these vigils throughout the metropolitan Detroit community.

101. On June 8, 2013, Ms. Mandell, Dr. Andersen and approximately 15-

20 other individuals associated with Women in Black-Detroit, participated in a vigil in downtown Detroit.

102. During this vigil, the Women in Black supporters met in downtown Detroit at the Central United Methodist Church and silently walked in black clothing single-file southbound on the sidewalks of Woodward Avenue towards the Detroit River. Their plan was to walk on the sidewalks of Woodward Avenue through the center of Detroit and then turn around and walk back to their meeting place.

103. Because the participants typically do not speak throughout their demonstration, they distribute small flyers to passersby explaining the purpose of the vigil and march.

104. The first five sentences of the flyer state: “Please Join Women in Black, Detroit, in a silent protest against war and violence at home and abroad. We protest U.S.–sanctioned violence around the world and mourn all victims of war, violence, and occupation. Everyone welcome. Please wear black. Please walk single file and in silence.”

105. Given that Woodward Avenue runs directly into Campus Martius, the vigil participants planned to walk silently on the sidewalk through Campus Martius and to pass out handbills explaining the purpose of their vigil to individuals in the park as they walked through.

106. However, upon entering Campus Martius Park, the Women in Black participants were confronted by a uniformed security guard employed by Guardsmark, Defendant John Doe.

107. The security guard explained to the Women in Black vigil participants that they were not allowed to march through Campus Martius Park.

108. There were no other commercial or non-commercial organized events happening at Campus Martius at the time.

109. The Women in Black vigil participants, including Ms. Mandell and Dr. Andersen, were forced to leave Campus Martius and re-route their march outside the park.

110. None of the vigil participants, including Ms. Mandell and Dr. Andersen, were able to distribute flyers in Campus Martius or spread their political message inside the park.

111. Dr. Andersen felt intimidated by Defendant John Doe's refusal to allow her and the other Women in Black participants to walk through Campus Martius.

112. The Women in Black vigil participants then continued to march southbound for another block on Woodward Avenue and then, as planned, turned around to walk back up Woodward Avenue northbound.

113. As the Women in Black vigil participants marched northbound on

Woodward, Ms. Mandell hurried ahead of the group and asked security guard John Doe why the Women in Black vigil participants were forbidden from walking through Campus Martius Park.

114. Ms. Mandell told the security guard that she believed she could walk through the park because it was city-owned.

115. The security guard informed Ms. Mandell that he was hired by the management company for the park which made the rules.

116. Ms. Mandell eventually convinced the security guard to allow her and the Women in Black vigil participants to walk through the park on the way back, but he forbade them from passing out literature.

117. Ms. Mandell, Dr. Andersen and the other vigil participants then walked north through the park but did not distribute any literature.

118. The political activities that Ms. Mandell, Dr. Andersen, and the Women in Black vigil participants were forbidden from carrying out in Campus Martius Park on June 8, 2013, are protected by the First Amendment of the United States Constitution.

119. Since the incident on June 8, 2013, Ms. Mandell, Dr. Andersen and other Women in Black vigil participants have not attempted to walk in or through Campus Martius Park.

120. In June of 2014, Women in Black had another vigil in downtown

Detroit along Woodward Avenue. Because they were forbidden from distributing literature in Campus Martius Park in June 2013, and because they feared that they would not be allowed to march through Campus Martius Park or pass out literature, the Women in Black vigil participants intentionally took a detour around Campus Martius Park and marched on the other side of the street.

121. Defendants Detroit 300 Conservancy and Gregory maintain a policy, practice or custom that prevents small groups of individuals from walking single-file through the park.

122. Until its contract with Detroit 300 Conservancy was terminated on May 1, 2014, Defendant Guardsmark maintained a policy, practice or custom that prevented small groups of individuals from walking single-file through the park.

123. Defendants Detroit 300 Conservancy and Gregory maintain a policy, practice or custom of prohibiting individuals or small groups of people from distributing political flyers in the park.

124. Until its contract with Detroit 300 Conservancy was terminated on May 1, 2014, Defendant Guardsmark maintained a policy, practice or custom that prevented small groups of individuals from distributing political flyers in the park.

125. As a direct and proximate result of Defendants' actions, Ms. Mandell and Dr. Andersen suffered the following injuries, among others:

- a. Shock, outrage, and emotional distress for being denied the ability to

exercise basic free speech rights and spread their political message at Campus Martius;

- b. Fear of arrest on June 8, 2013;
- c. Outrage, frustration and other emotional distress stemming from the fact that private entities are preventing them from engaging in political speech at a public park.

Following the Filing of this Lawsuit, the City of Detroit and Detroit 300 Conservancy Adopted Interim Free Speech Rules

126. Plaintiffs filed their original complaint in this case on January 28, 2015, for the violation of their First Amendment rights. On the same day, they filed a motion for a preliminary injunction seeking a preliminary order permitting them to petition, leaflet and demonstrate in Campus Martius without a permit.

127. In response to the Complaint, the City of Detroit and Detroit 300 Conservancy, through counsel, met with Plaintiffs' counsel to discuss the promulgation of new interim rules for Campus Martius to address the claims raised by Plaintiffs in their preliminary injunction motion.

128. On April 8, 2015, the City of Detroit's corporation counsel issued an opinion to Alicia Bradford, the Director of the Department of Recreation for the City of Detroit, entitled "Opinion of the Corporation Counsel Regarding First Amendment Rights and Regulations in City of Detroit Parks." [hereinafter

Corporation Counsel Opinion] [Ex. A.]

129. The Corporation Counsel Opinion states “the city recognizes that its parks remain public fora where leafleting, petitioning, and marching are forms of speech protected by the First Amendment, even where, like Campus Martius Park, they are operated by private, non-governmental entities.” [Ex. A at 2.]

130. The Corporation Counsel Opinion instructs that up to 25 people are allowed to engage in the First Amendment activities of leafleting, petitioning, and demonstrating, without a permit, in Campus Martius Park. [*Id.* at 9.]

131. Because the opinion addressed the immediate concerns raised in their motion for a preliminary injunction, Plaintiffs withdrew their motion for preliminary injunction.

132. However, the interim free speech rules are not permanent, and do not address Plaintiffs’ claim for a permanent injunction and damages.

133. Defendants Detroit 300 Conservancy and Gregory have not posted the interim rules to the Campus Martius website as required by the Corporation Counsel Opinion.

134. The Corporation Counsel Opinion is not legally binding and may be rescinded by the Corporation Counsel or the City of Detroit at any time.

135. If the Corporation Counsel Opinion is ignored or rescinded, Plaintiffs will again be prevented from petitioning, leafleting and participating in vigils

without a permit in Campus Martius Park.

CAUSE OF ACTION

**First Amendment Right to Free Speech
And 42 U.S.C. § 1983**

136. The First Amendment of the United States Constitution prohibits abridgment of the freedom of speech. The First Amendment applies to the states pursuant to the Fourteenth Amendment. Government officials or private persons acting under color of state law who violate the freedoms guaranteed individuals by the United States Constitution are liable at law and in equity under 42 U.S.C. § 1983.

137. At all times relevant to this complaint, Defendants were acting under color of state law because:

- a. They were performing the public function of managing a public park.
- b. They were performing the public function of regulating the public's access to, and use of, a traditional public forum.
- c. They conspired, acted in concert with, and acted in joint participation with, each other and with City of Detroit officials to manage a public park and public sidewalk, and regulate the public's access to, and use of, a traditional public forum.

d. They had a symbiotic relationship or close nexus with the City of Detroit with respect to managing a public park and public sidewalk, and controlling the public's access to, and use of, a traditional public forum.

138. The First Amendment protects the right of individuals to collect signatures on petitions in traditional public forums such as parks, and on traditional public forums such as sidewalks.

139. The First Amendment to the United States Constitution protects the right of individuals to distribute political flyers in traditional public forums such as parks, and on traditional public forums such as sidewalks.

140. The First Amendment to the United States Constitution protects the right of individuals to organize into small groups and walk through a public park.

141. Even if Defendants instituted a permit process for petitioning, leafleting and small, non-disruptive marches at Campus Martius, such a process would violate the First Amendment because it would constitute an unlawful prior restraint on speech.

142. Defendants Detroit 300 Conservancy, Gregory, Badrak, Guardsmark, Gene Doe, and Taylor violated the clearly established First Amendment rights of Moratorium Now!, Cheryl LaBash, and Thomas Michalak when they prohibited Moratorium Now! and its supporters from circulating political petitions and distributing political literature on the sidewalk surrounding Campus Martius on

February 14, 2014.

143. Defendants Detroit 300 Conservancy, Gregory, Badrak, Guardsmark and John Doe violated the clearly established First Amendment rights of Joan Mandell and Wallis Andersen on June 8, 2013, when they refused to allow the Women in Black vigil participants to march through Campus Martius and distribute political literature.

144. Defendants continue to violate the First Amendment rights of Plaintiffs by chilling constitutionally protected speech.

RELIEF REQUESTED

For the reasons set forth above, Plaintiffs respectfully request that this court:

- A. Enter judgment in favor of Plaintiffs and against Defendants;
- B. Declare that Defendants violated Plaintiffs' First Amendment rights in denying Plaintiffs access to Campus Martius to:
 - 1. Circulate political petitions;
 - 2. Distribute political literature; and
 - 3. Walk through the park as part of a small, non-disruptive protest.
- C. Enter a permanent injunction that prevents Defendants from unconstitutionally barring Plaintiffs and other visitors to Campus Martius from:
 - 1. Circulating political petitions;

2. Distributing political literature; and
3. Walking through the park as part of a small, non-disruptive protest;

D. Award Plaintiffs compensatory damages and punitive damages, or, in the alternative, nominal damages, for violations of their First Amendment rights;

E. Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

F. Grant or award such other relief as the Court may deem just, equitable or appropriate under the circumstances.

Respectfully submitted,

/s/ Brooke A. Merriweather-Tucker
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April 30, 2015

CERTIFICATE OF SERVICE

I certify that on April 30, 2015 I filed the foregoing document through the electronic filing system, and that all counsel of record is registered with the electronic filing system and will be served through the electronic filing system.

/s/ Brooke Merriweather-Tucker

EXHIBIT A



CITY OF DETROIT
LAW DEPARTMENT

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April 8, 2015

Alicia Bradford
Director
Department of Recreation
City of Detroit
Northwest Activities Center
18100 Meyers
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OPINION OF THE CORPORATION COUNSEL
REGARDING FIRST AMENDMENT RIGHTS AND REGULATIONS
IN CITY OF DETROIT PARKS

Dear Director Bradford:

I. Introduction

This Opinion is being issued in response to litigation filed against the City of Detroit and other parties in the matter *Moratorium Now, et. al. v. Detroit 300 Conservancy, et. al.*, (Case No. 2:15-cv-10373-BAF-RSW), which arises out of two instances that allegedly occurred a year ago (February 2014) and over a year and a half ago (June 2013), respectively, as asserted by Moratorium Now!, a nonprofit organization, Cheryl Labash, Thomas Michalak, Joan Mandell, and Wallis Anderson (“Plaintiffs”). Plaintiffs allege that Defendants prohibited them from passing out handbills and petitioning in Campus Martius Park in Detroit, Michigan, in violation of their First Amendment Right of Free Speech and 42 U.S.C. Sec. 1983. The claims have been plead in a Complaint and Motion for Preliminary Injunction, filed in the U.S. District Court for the Eastern District of Michigan.

The City has no evidence that the actions asserted in the lawsuit actually occurred. Nevertheless, First Amendment rights for all our citizens must be respected in our public places, and rather than aggressively litigating the individual claims in this case, it would better serve the public’s



interest to resolve the underlying issues raised in the pleadings in mutual collaboration. Therefore, after the pleadings were filed, counsel for the parties began communicating by phone conferences, emails and in person, in a good faith attempt to reach a resolution.

We have in fact now reached a meeting of the minds. The City (1) commits to protecting the First Amendment rights of its citizens in all its parks, including Campus Martius Park, and (2) will establish and enforce policies that assure the protection of such rights, now and in the future.

II. Facts

Campus Martius is a City park – a public park – even though it is managed by Detroit 300 Conservancy. As such, First Amendment rights are to be afforded to all who come to the Park. That said, Campus Martius is a *unique* park in many significant respects. It has a relatively small footprint (only 1.2 acres), bounded on all sides by traffic on Woodward and Cadillac Square. It is very heavily programmed year-round, with space dedicated to specific functions: the restaurant (Fountain Bistro), ice skating rink (in the Winter), beach area (in the Summer), central fountain, historic markers, the Soldiers and Sailors Monument, plantings, and performance stage with portable seating on the adjacent lawn.

III. Applicable Law

There is no dispute that leafleting, petitioning and silently marching while carrying signs are forms of speech protected by the First Amendment. *Schenk v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997). The City also agrees that City parks are public fora for First Amendment purposes. *Hague v. C.I.O.*, 307 U.S. 496 (1939); *Occupy Nashville v. Hasham*, 769 F.3d 434, 445 (6th Cir 2014) (“Public parks are certainly quintessential public forums.”). Furthermore, the City recognizes that its parks remain public fora where leafleting, petitioning, and marching are forms of speech protected by the First Amendment, even where, like Campus Martius Park, they are operated by private, non-governmental entities. *ACLU v. Las Vegas*, 333 F.3d 1092 (9th Cir. 2003); *Johnson v. Minneapolis Park & Recreation Department*, 2012 U.S. Dist LEXIS 8014.

Nevertheless, the City may apply reasonable “time, place and manner restrictions” upon such speech provided that such restrictions are content-neutral, and are (1) narrowly tailored to serve a significant government interest, and (2) leave open ample alternative channels of expression. *Perry Education Association v. Perry Local Educators’ Association*, 460 U.S. 37 (1983); *United States v. Grace*, 461 U.S. 171 (1983). These regulations may, under certain circumstances, include permitting requirements and restricting demonstrations to certain portions of public property. *Thomas v. Chicago Park District*, 534 U.S. 316 (2002); *National Council of Arab-Americans v. City of New York*, 478 F.Supp.2d 480 (S.D. N.Y 2007).



The City of Detroit has a "substantial interest in maintaining its parks . . . in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them." *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 at 296 (1984)).

IV. Immediate Adoption of Interim Policies and Rules Regarding First Amendment Protected Speech at City Parks

Through this Opinion, the following rules will be implemented in City parks until ordinance amendments to the Detroit City Code are adopted by the Detroit City Council. These rules have been informed by a careful examination of prevailing case law and a review of the agreement reached between the ACLU of Maryland and the City of Baltimore, under analogous circumstances.

A. General Rules Applicable To All Parks:

Definitions:

- **"Leafleting" is the distribution of non-commercial printed material or items while walking or standing and addressing the person to whom the material is offered in a manner consistent with laws applicable to such conduct in a public place.**
- **"Petitioning" is the seeking and gathering of signatures on petitions in a manner consistent with laws applicable to such conduct in a public place.**
- **"Demonstration" shall mean any demonstration, picketing, speechmaking, marching, holding of vigils, and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons in a manner consistent with laws applicable to such conduct in a public place.**
- **"Solicitation" shall mean any act by which one person requests an immediate donation of money or other thing of value from another or others in person, regardless of the solicitor's purpose or intended use of the money or other thing of value, in a manner consistent with laws applicable to such conduct in a public place. The solicitation may be oral, written, or by other means of communication. Solicitation is not intended to mean sales or vending.**



- **“Public Event” shall mean sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, fairs, festivals and similar events (including such events presented by the City), which do not satisfy the definition of “Demonstration” outlined above, and which are engaged in by one or more persons in a manner consistent with laws applicable to such conduct in a public place. This term includes any event for which an entry fee is charged.**

- Subject to the provisions in Sections B and C below, Leafleting, Petitioning, Solicitation and Demonstration activities by **forty-five or less** people will be allowed **without** a permit, unless:
 1. The activity unduly interferes or conflicts with a previously-issued permit for the same area;
 2. The location sought is not suitable because of landscaping, planting or other environmental conditions reasonably likely to be negatively impacted by the proposed activity;
 3. The activity unduly impedes vehicular or pedestrian traffic, or endangers the person(s) engaging in such activities or the public;
 4. The activity unduly impedes scheduled activities;
 5. The activity unduly impedes the operation and functioning of authorized commercial activities on park grounds;
 6. The activity violates any federal, state or local law, ordinance or regulation; or
 7. The activity requires sound amplification (except that a hand-held, battery operated megaphone is allowed without a permit, so long as its use will comply with relevant noise ordinances).

- Groups of more than 45 people who desire to engage in leafleting, petitioning, solicitation or demonstration activities must request a permit from the Detroit Recreation Department.

- Permit fees, if any, shall comply with the standards set forth in *Cox v. New Hampshire*, 312 U.S. 569 (1941) and *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

- Permit fees will be **waived** for any person or group that attests that they cannot afford them or that payment of the fee will inhibit his/her/its ability to engage in the permitted activity.

- In the case of a Public Event, if the Recreation Department Director determines that the proposed activity will require the commitment of municipal resources or personnel, security, cleanup expenses or other significant costs beyond those which are normally available or



normally provided by the City, the Director may also require the applicant to meet reasonable insurance, bonding or indemnification requirements, subject to First Amendment limitations.

- Applicants for permits for Leafleting, Petitioning, Solicitation and Demonstration activities must apply for permit at least **2 business days prior** to the event. However, in order to respond to **imminent events or concerns**, the Recreation Department will **waive** the 2-day advance notice requirement if the size and nature of the activity will not reasonably require the commitment of municipal resources or personnel beyond those which are normally available or which can reasonably be made available within the necessary time period.
- Applicants for permits for a Public Event must apply for a permit at least **7 business days** prior to the event.
- Applicants for a permit must supply the following information in the application:
 1. The name, address and day and evening phone number of the person or organization or other entity seeking the permit.
 2. The name, address and day and evening phone number of the person who will be responsible for conducting the public event, picnic or private gathering.
 3. The nature of the public event, picnic or private gathering. The Director reserves the right to request additional information if necessary.
 4. The date or dates, and hours during which the public event, picnic or private gathering is proposed to be held, including set up and disassembly time.
 5. The number of persons who will be engaged in such activities.
 6. The location to be used.
 7. The equipment and structures to be used during the activity.
 8. Information about any fees to be charged for the activity.
- The Recreation Department shall issue a decision on permit applications within **2 days** of submission, and will send the decision and the grounds for the decision to the applicant in writing.
- The permit holder, or the person in charge of an expressive activity without a permit under Section B below, shall exercise reasonable care under the circumstances to prevent damage to City property by those participating in the activity.
- The Recreation Department **need not issue a permit if** the Department finds that:
 1. The application is incomplete or contains a material falsehood;
 2. The individual applying for the permit has intentionally damaged park property



- within six months from the date of the application. Such applicant, if issued a permit, will be required to post a bond consistent with First Amendment protections;
3. The activity will unduly interfere or conflict with a previously-issued permit for the same area;
 4. The location sought is not suitable because of landscaping, planting or other environmental conditions reasonably likely to be negatively impacted by the proposed activity;
 5. The activity will unduly impede vehicular or pedestrian traffic, or will endanger the applicant or the public;
 6. The activity will unduly impede scheduled activities;
 7. The activity will unduly impede the operation and functioning of adjacent commercial activities;
 8. The activity is of such a nature or duration that it cannot reasonably be accommodated in the particular area requested in the permit application;
 9. The activity will violate any federal, state or local law, ordinance or regulation; or
 10. The activity is of such a nature or duration that it cannot reasonably be accommodated in the particular area requested in the permit application;

The term “unduly impede” shall not be construed to include minor inconveniences or disruptions, such as can reasonably be expected whenever a large group of people are gathered together.

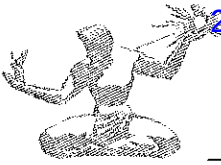
- The permit may be **revoked** by the Recreation Department for any of the following reasons:
 1. Violation of the terms or conditions of the permit;
 2. The activities or conduct of the permit holder constitute a clear and present danger to the public health, welfare and safety;
 3. The number of persons engaged in the permitted activity exceeds the number stated in the permit, subject to Section B below;
 4. The activities of the permit holder constitute a violation of any applicable law or regulation.
- In granting a permit for a demonstration, the Issuer will exercise no discretion over the issuance of a permit hereunder, except as provided for in these Rules. Nothing in these Rules will be construed to interfere with the right of public assembly except as constitutionally permitted.
- In the event a permit is denied, the Issuer shall notify the applicant in writing immediately of the reasons for that determination.



An applicant whose permit application has been denied under this rule can seek review in a court of law.

B. Instant Permission to Engage in Expressive Activity

1. If a person or group otherwise qualified for a permit for expressive activity (that is, the proposed event or activity will not violate grounds 2 through 10 justifying a denial of a permit specified above), including leafleting, petitioning, solicitation or demonstration, appears at a location where this expressive activity is allowed, with the purpose of engaging in this expressive activity, but does not have a permit to do so, and a member of the Detroit Police Department who responds to the location, such officer should contact the Head of Permits for the Detroit Recreation Department of Recreation and Parks, or his/her designee, by telephone or email or other similar means to report the situation and to determine whether there are any events with permits scheduled for that location. If there are no conflicting permits, the police shall allow the expressive activity to proceed, unless precluded by one of the following:
 - (a) The issuance of instant permission to engage in expressive activity would result in any actual diminution, caused by the lack of advance notice, in the ability of the police department, or the ability of other governmental agencies, appropriately to organize and allocate their personnel and resources so as to fulfill their general missions and to protect the rights of both persons exercising free speech and other persons wishing to use the streets, sidewalks, and other public ways, and parks;
 - (b) The proposed event will create a substantial possibility of violent, disorderly conduct likely to endanger public safety or to result in significant property damage;
 - (c) The proposed event will create a substantial possibility of unreasonable interference with pedestrian or vehicular traffic or for danger to the public notwithstanding the deployment of available governmental personnel;
2. In assessing whether the applicant shall be allowed to proceed with the activity requested without a permit, the fact that activity protected by the First Amendment is involved shall create a strong presumption that the activity should be allowed to proceed, assuming that no conflicting permit has been issued to others. However, if, after having been notified that a person or group desires to engage in expressive activities without a permit, the Head of Permits for the Detroit Recreation Department determines that the proposed event or activity will violate grounds 2 through 10 justifying a denial of a permit specified above, the Head of Permits for the Detroit Recreation Department may request that the Police Department ask the person or group to disperse or relocate their activities.



3. The police officer should ask the person or group leader for a contact name, address, telephone number and email, and for the reason why the person or group did not or could not apply for a permit under the normal permit application rules. The officer should convey that information to the Head of Permits. The response to the officer's inquiries or the failure to provide a response shall in no way be considered in deciding whether to grant or deny permission to engage in the expressive activity at issue.
4. If the Head of Permits or his/her designee cannot be reached, and it cannot be determined whether there are any previously scheduled activities or events for the location at the time of the proposed expressive activity, the police shall allow the non-permitted expressive activity to take place, subject to the provisions above. In the event that a person or group with a permit to conduct an activity at the same time and place arrives at the location, persons engaged in non-permitted activities shall vacate the area for use by the permit holder and may be directed to disperse or relocate their activity. The fact that a person or group otherwise qualified for a permit for expressive activity, such as leafleting, petitioning, solicitation, and demonstration, does not have one shall not, by itself, be a basis to order the group to disperse, even if the Head of Permits cannot be reached.
5. If, at any time after the grant of permission to engage in expressive activity without a permit, there is a material change in any of the criteria listed above in section B, which would have warranted denial of permission to engage in expressive activity without a permit, that permission may be withdrawn.
6. If a private security guard employed to patrol the area where the expressive activity is taking, or will take, place responds to the location before the police, the security guard shall immediately contact the police which shall take action in accordance with the provisions outlined above. The private security guard shall allow the expressive activity to commence or continue until the police arrive unless the proposed event will create a substantial possibility of violent, disorderly conduct likely to endanger public safety or to result in significant property damage or will interfere with a previously scheduled permitted activity.

C. Rules Specifically Applicable to Campus Martius Park

- Campus Martius Park possesses **unique characteristics**, justifying special rules in order to balance the interests of those desiring to engage in expressive activities against the interests of the City in protecting the park and others who desire to use the park. These include the following:
 1. Small size, compared with other parks and public spaces;
 2. Located in middle of busy downtown thoroughfare (Woodward Avenue),



- which raises safety concerns;
3. Private businesses have leased space within the Park for private purposes consistent with recreation;
 4. Heavily programmed with other events;
 5. Expensive and fragile plantings, easily damaged by foot traffic.
- Proposed special rules applicable to Campus Martius Park:
 1. No leafleting, petitioning, solicitation or demonstration activities shall be permitted within 10 feet of the outdoor dining area set aside for the Fountain Bistro during the Bistro's outdoor dining hours of operation.
 2. No leafleting, petitioning, solicitation or demonstration activities shall be permitted on the ice rink installed each winter in the Park.
 3. No leafleting, petitioning, solicitation or demonstration activities shall be permitted on stages or in tents which may be erected in connection with other scheduled events in the Park.
 4. No leafleting, petitioning, solicitation or demonstration activities shall utilize any monuments, public art or trees planted in the Park.
 5. No sound amplification shall be allowed to accompany leafleting, petitioning, solicitation or demonstration activities without a permit.
 6. Groups of more than 25 people who desire to engage in leafleting, petitioning, solicitation or demonstration activities must request a permit from the Detroit Recreation Department.
 7. During festivals or events open to the general public, leafleting, petitioning, solicitation or demonstration activities shall be permitted in Campus Martius in a manner consistent with these Park Rules and laws applicable to such activities.

The City recognizes that the sidewalk surrounding Campus Martius, including that portion abutting the Soldiers and Sailors Monument, shall always remain available for First Amendment activity unless such activity would endanger the public, unduly impede pedestrian or vehicular traffic, or in the event that the sidewalk is closed to the general public

The proposed rules described above relating to the City's parks, and more specifically relating to Campus Martius Park, are subject to change, based on further negotiations with the ACLU or other groups or individuals.



V. Amendment of City Ordinances and Departmental Rules

The City's Law Department will recommend to City Council amendments to its ordinances to better ensure First Amendment protections. In fact, as explained at the February 24th meeting, the City had already begun a wholesale review, amendment and re-codification of the entire Detroit City Code well before this action was filed. This process, however, will take many additional months to complete, and is not expected to be completed until at least July of this year. The City welcomes the input of the ACLU and other members of the public in this process.

Section 40-1-4 of the Detroit City Code states that "The recreation department shall establish reasonable rules and regulations for the protection of rights and property vested in the city and under control of the department, for the uses, care, maintenance and management of all parks . . ." Consistent with this authority, the City has begun the process of promulgating departmental rules to supplement the planned changes to the Detroit City Code, which would also better address protected speech activities in the City's parks. However, like the amendment of its ordinances, this will likely take several months to complete. Again, the City will welcome the input of the ACLU and other members of the public in this process.

VI. Training

The City of Detroit shall provide reasonable training on the interim policies and rules outlined above to all Detroit employees and agents, and all private entities, responsible for implementing and/or enforcing these regulations in any of the city's public parks. Private entities responsible for managing or operating any of the city's public parks shall also take reasonable steps to ensure that its employees and agents are trained on proper implementation and enforcement of the regulations outlined above.

VII. Public Education

The City of Detroit will make the Park Rules and Guidelines contained in this agreement reasonably and readily accessible to the public by posting the regulations and permit forms on the City's website and the website of any private entity responsible for operating or managing a public park within the city. The City of Detroit and any private entity responsible for operating or managing a public park shall also ensure that a summary of these rules are posted in an area of high visibility inside the park.

VIII. Conclusion

In summary, the City of Detroit is committed to protecting the First Amendment rights of its citizens to engage in protected speech in Campus Martius Park, and in the City's other parks and public spaces. The City has already begun the process to ensure that its ordinances and departmental rules adequately protect such rights, while also serving the City's interests in protecting its parks and



the rights of others who wish to enjoy them. Until these steps can be completed, the City shall implement the interim guidelines regulating expressive activities in its parks summarized in this Opinion.

Sincerely,

Melvin B. Hollowell
Corporation Counsel

cc: Hon. Michael E. Duggan, Mayor
Hon. Brenda Jones, City Council President
Hon. George Cushingberry, Jr., City Council President Pro Tem
Hon. Janee Ayers, City Council At-Large
Hon. James Tate, City Council Member District 1
Hon. Scott Benson, City Council Member District 3
Hon. Andre Spivey, City Council Member District 4
Hon. Mary Sheffield, City Council Member District 5
Hon. Raquel Castaneda-Lopez, City Council Member District 6
Hon. Gabe Leland, City Council Member District 7
David Whittaker, Legislative Policy Division
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Jill Wheaton, Dykema