

peacefully express views criticizing the government do so in locations that are further away, or generally less desirable, than non-protesters. The discrimination takes two principal forms.

3. Under the first form, the protesters are moved further away from the location of the official and/or the event, allowing people who express views that support the government to remain closer. Under the second form, everyone expressing a view -- either critical or supportive of the government -- is moved further away, leaving people who merely observe, but publicly express no view, to remain closer. Under both forms of the discrimination, protesters are typically segregated into what are commonly referred to as “protest zones.”

4. The protester discrimination has three practical consequences: a) it prevents governmental critics from gathering in traditional public areas where other members of the public are allowed to congregate; b) it insulates the government officials from seeing or hearing the protesters and vice-versa; and c) it gives to the media and the American public the appearance that there exists less dissent from the government official or his/her policies than there really is.

5. Plaintiffs seek an injunction prohibiting the Secret Service from applying these unconstitutional measures to restrict peaceful political protest activity in public fora by plaintiffs and other protesters during future public appearances at any event where the Secret Service plays a role in arranging security.

6. Plaintiffs also seek to enforce against the City of Philadelphia Police Department the consent decree, signed by this Court in Pledge of Resistance v. We the People, Inc., CA-87-3975 (E.D. Pa. 1988, Fullam, C.J.), which already requires Philadelphia law enforcement

officials to treat protesters at appearances by the President or Vice President of the United States in the way plaintiffs now allege the United States Secret Service must do nationwide.

Jurisdiction

7. As plaintiffs seek to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983, this Court has jurisdiction over this civil action pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3) and (4). Pursuant to 28 U.S.C. Sections 2201 and 2202 this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

Parties

8. Plaintiff, the Association of Community Organizations for Reform Now (ACORN), is the nation's largest community organization of low and moderate-income families, with over 150,000 member families organized into 700 neighborhood chapters in 51 cities across the country. ACORN's priorities include: better housing for first-time-home buyers and tenants, living wages for low-wage workers, more investment in our communities from banks and governments, and better public schools. ACORN achieves its goals by building community organizations through direct action, negotiation, legislation, and voter participation. ACORN has organized, and will continue to organize, protests across the country calling attention to the numerous ways in which the government's policies are at odds with the needs of low-income people.

9. Plaintiff, USAction, is among the nation's largest progressive activist organizations, dedicated to winning social and economic justice for all. The group represents over three million members in 33 affiliates. USAction's priorities include advocating for

affordable healthcare for all, improving public education, promoting corporate responsibility, making the country's tax system fairer for lower-income people, and opposing the war with Iraq. USAction achieves its goals through voter mobilization, legislative lobbying and direct actions, including protests. USAction has, through its affiliates, organized and participated in protests across the country, and will continue to do so.

10. Plaintiff United for Peace and Justice (UFPJ) is a coalition of more than 650 local groups and national organizations throughout the United States who have joined together to oppose the current administration's policy of militarism and warfare, and to promote peace and economic justice. UFPJ's priorities include educating the public about the current administration's threat to civil liberties and immigrant's rights and the dangers of globalization and nuclear proliferation. The organization promotes its agenda through public education, media efforts, campaigns directed at policy makers, and numerous protest activities. Founded in October 2002, UFPJ and its participating organizations have already helped organize hundreds of protests and rallies around the country, and organized the two largest demonstrations in the United States against the Iraq war. UFPJ intends to continue organizing and participating in protest activities against current and future administrations.

11. Plaintiff The National Organization for Women (NOW) is the country's oldest and largest grassroots feminist organization, with over 500,000 contributing members in more than 450 chapters in all 50 states and the District of Columbia. Since its inception in 1967, NOW's purpose has been to take action to achieve full equality for women in all spheres of life including the economic, the social and the political. To that end, NOW and its local chapters engage in demonstrating, picketing, protesting, and marching, as well as voter education and voter

registration drives, direct and grassroots lobbying, bringing lawsuits, and participating in administrative rulemaking proceedings.

12. Defendant, CITY OF PHILADELPHIA, is an incorporated municipality of the Commonwealth of Pennsylvania. All City of Philadelphia employees and officials identified in this complaint were at all relevant times operating under color of state law.

13. Defendant, THE POLICE DEPARTMENT OF THE CITY OF PHILADELPHIA, is responsible for all law enforcement activities within the City of Philadelphia. All Philadelphia Police Department employees and officials identified in this complaint were at all relevant times operating under color of state law.

14. Defendant, THE UNITED STATES SECRET SERVICE OF THE DEPARTMENT OF HOMELAND SECURITY, is the federal agency charged with, among other assignments, providing security for the President and the Vice-President of the United States and other senior federal officials (“senior federal officials”).

FACTS

15. When senior federal officials travel, the Secret Service assumes responsibility for decisions about demonstrations, protests, and other activity protected by the First Amendment at any event involving those officials (“events”).

16. Although the Secret Service often works together with state, county, municipal and other federal law enforcement agencies, the Secret Service has the ultimate authority and responsibility for this task.

17. The Secret Service has a legal responsibility and a legitimate interest in protecting the security of senior federal officials.

18. The Secret Service has no legitimate interest in violating the First Amendment.

19. In Philadelphia and elsewhere around the country, the Secret Service has, in conjunction with local law enforcement officials, discriminated against and restricted protesters, typically at events, particularly those attended by the President and the Vice-President. The discriminatory practice requires that protesters who exercise their First Amendment right to picket, leaflet, chant or otherwise peacefully express views criticizing the government do so in locations that are further away, or generally less desirable, than non-protesters. The discrimination takes two principal forms.

20. Under the first form, only the protesters are moved further away from the location of the official and/or the event, allowing people who express views that support the government to remain closer.

21. Under the second form, everyone expressing a view -- either critical or supportive of the government -- is moved further away, leaving people who merely observe, but publicly express no view, to remain closer. Under both forms of the discrimination, protesters are typically segregated into what are commonly referred to as "protest zones."

22. Frequently, these protest zones are located so far away, or positioned in such a manner, that the protesters cannot see or hear the visiting federal official or people attending the event, and vice versa.

23. The circumstances attending plaintiff ACORN's attempted protest at President Bush's appearance in Philadelphia on July 24, 2003 -- which was the subject of an emergency injunction order issued by this Court on that date -- are typical of the Secret Service's protester discrimination across the country.

24. The same practices to restrict protesters have been employed by the Secret Service, working with local police departments, many times throughout the country.

25. Excluding protesters from traditional public forums where Administration supporters, spectators and other members of the general public are allowed to congregate and relegating protesters to distant protest zones is not a tactic new to the current presidential administration.

26. The discriminatory practices against protesters during events where the Secret Service arranges security have occurred more frequently in the past two years.

27. The practice of discriminating against protesters violates the First Amendment of the United States Constitution, and reflects a failure by the Secret Service to adequately train and/or supervise its local agents, employees and officials.

Philadelphia, December 12, 2002, Demonstration

28. In anticipation of a December 12, 2002, Presidential visit to Philadelphia, plaintiff USAction, through its local affiliate Citizens for Consumer Justice (CCJ), organized a demonstration to register opposition to President Bush's proposed tax cuts, which it criticizes as benefiting only the wealthiest Americans.

29. CCJ contacted the Civil Affairs Unit of defendant Philadelphia Police Department, to apprise it of their intention to demonstrate in front of the Marriot Hotel located on Filbert Street, between 12th and 13th Streets, in Center City Philadelphia.

30. On December 12, 2002, when CCJ and its coalition partners arrived at 12th and Market, members of the Philadelphia Police Department informed them that protest was

permitted only behind barriers that the Department had erected on that intersection's southeast corner.

31. CCJ and others who joined in the demonstration it organized immediately objected to this arrangement for two reasons: first, because the Presidential motorcade route would never pass that intersection, turning as it did from 12th onto Filbert to reach the hotel's main entrance, a full block north of the Department's cornered-off intersection; and second because plaintiff could observe that other members of the public were allowed free access, without going through any visible security measures, to the sidewalk immediately adjacent to the hotel's entrance on 12th and Filbert streets.

32. These objections were lodged with Captain William Fisher, the Philadelphia Police Department's Chief of Civil Affairs. In response, he stated that the Department had established the location of this demonstration site at the Secret Service's direction.

33. Notwithstanding his initial claim to be without authority, when he was reminded of this Court's November 25, 1988, Order he permitted the protesters to leave the cornered-off area and proceed north along 12th street approximately two-thirds of the way to Filbert Street, before he once again set up a line of police officers blocking further passage north.

34. As the Marriot's main entrance sits on a cul-de-sac, which is recessed even further than the last one-third of the space between Market and Filbert, the police line ensured that CCJ and its partners could not see or be seen by the Presidential motorcade.

35. Persons espousing clearly supportive views of the President were, however, allowed to remain on the final one-third of that block, an area not otherwise restricted by

security. Consequently, these supporters could be easily seen and/or heard by the President's motorcade.

36. Indeed, one individual who had been permitted to remain on the northern third of that street approached the protesters and began haranguing them for their lack of patriotism. He delivered these taunts while standing directly behind several Philadelphia Police Department officers.

37. Captain Fisher and other Philadelphia police officers were fully aware that Bush administration supporters were occupying an area that CCJ was led to believe had been closed for demonstration purposes by order of the Secret Service.

Philadelphia July 24, 2003, Demonstration

38. At approximately 10:30 am, July 24, 2003, President Bush toured the Treasury Financial Facility at 13000 Townsend Road. The Facility was printing approximately 25.4 million checks reimbursing parents pursuant to the newly enacted Child Tax Credit.

39. In an effort to call attention to the failure of the President and the House Republican leadership to broaden that tax credit to benefit the working poor, plaintiff ACORN called upon its members to demonstrate outside the facility during the President's visit.

40. In anticipation of that event, ACORN held a series of discussions with both the Secret Service and the Civil Affairs Unit of the Philadelphia Police Department requesting the right to demonstrate on the public sidewalk across the street from the Treasury Financial Facility.

41. On July 23, 2003, ACORN was informed by both officers of Philadelphia Police Department's Civil Affairs Unit and agents of the Secret Service that neither ACORN nor any other group would be permitted access to the sidewalk across the street from the Treasury

Financial Facility during the President's visit. The Secret Service and Police officials advised that the area would be part of a security buffer zone.

42. Based on the Secret Service's assertion that no one except police personnel would be allowed directly in front of the building, ACORN agreed that it would hold its demonstration on the corner of the sidewalk diagonally across the street from the Treasury Financial Facility building. This area, however, would make it less likely that the President would observe ACORN when entering and leaving the Treasury Financial Facility.

43. On July 24, 2003, legal observers from the American Civil Liberties Union sent to ensure that neither the Secret Service nor the Philadelphia Police interfere with ACORN's protest, observed that there were individuals on the sidewalk immediately in front of the Treasury Financial Facility building in support of President Bush.

44. Within minutes of the observers noticing the President's supporters, ACORN's counsel began complaining about this discrimination to police officials. At about the same time, the supporters were moved from their location.

45. Following that complaint, Secret Service officers directed the Philadelphia Police Department to move ACORN protesters from the originally-designated corner to a location even further from the Treasury Financial Facility.

46. As a result of the original discriminatory treatment afforded protesters based on their viewpoint, which permitted individuals sympathetic to the administration closer access to the Treasury Financial Facility, and the attempt to move ACORN to a location from which it would be much more difficult for them to be seen or heard by the President, an attorney for ACORN that morning applied to this Court for a Temporary Restraining Order.

47. In response to that application, on July 24th 2003, this Court ordered, “the defendants to permit plaintiffs to demonstrate peacefully at the corner diagonally across the street from the Treasury Financial Facility Building, which is located at 12000 Townsend, no farther away from the Treasury Financial Facility than other protesters.”

48. Even as the Court was holding that hearing defendants parked several large police vans directly in front of ACORN’s members making it less likely that either they or the President would see each other.

49. Additionally, when a number of individuals displaying the American flag, thereby demonstrating their support of the President, arrayed themselves on the other side of the street, defendants took no steps to impede their view of the President or his of them.

**Restrictions on Protesters at Events Across the United States
The Secret Service’s First Practice**

50. In many cities across the country during recent Presidential and Vice Presidential appearances, the defendant Secret Service has required protesters to move further away from the location of the official and/or the event, allowing people who express views that support the government to remain closer. The incidents include, but are not limited to, the following:

- a. April 29, 2002, Albuquerque, New Mexico, Presidential fund-raiser at local hotel;
- b. August 23, 2002, Stockton, California, Presidential fund-raiser in a local park;
- c. September 2, 2002, Neville Island, Pennsylvania, Presidential appearance at labor rally;
- d. September 22, 2002, Trenton, New Jersey, Presidential fund-raiser at local arena;
- e. September 27, 2002, Phoenix, Arizona, Presidential fund-raiser at downtown Civic Arena;

- f. October 24, 2002, Columbia, South Carolina, Presidential appearance at airport;
- g. November 4, 2002, St. Louis, Missouri, Presidential appearance at the St. Charles Family Area;
- h. January 22, 2003, St. Louis, Missouri, Presidential appearance to announce an economic plan;

**Restrictions on Protesters at Events Across the United States
The Secret Service's Second Practice**

51. In many cities across the country during recent Presidential and Vice Presidential appearances, the defendant Secret Service has required everyone expressing a view -- either critical or supportive of the government -- to move further away from the location of the official and/or the event leaving people who merely observe, but publicly express no view, to remain closer. The incidents include, but are not limited to, the following:

- a. March 27, 2001, Kalamazoo, Michigan, Presidential appearance at Western Michigan University;
- b. February 6, 2002, Evansville, Indiana, Vice Presidential appearance at the local civic center;
- c. August 23, 2002, Stockton, California, Presidential fund-raiser in a local park;
- d. September, 26, 2002, Houston, Texas, Presidential fund-raiser at local hotel;
- e. September 27, 2002, Phoenix, Arizona, Presidential fund-raiser at downtown Civic Arena;
- f. June 17, 2003, Washington, D.C., Presidential appearance at downtown hotel; and
- g. June 23, 2003, Richmond, Virginia, Vice Presidential fund-raiser at downtown hotel.

52. Plaintiffs and their affiliated organizations and members have been directly involved in many of the incidents referred to in the foregoing paragraphs. Consequently, their First Amendment right to engage in peaceful political protest activities in traditional public forums has been violated.

53. Plaintiffs and their affiliated organizations and members intend to continue to organize and participate in peaceful political protest activities in traditional public forums when senior federal officials protected by the Secret Service come to their area.

54. Absent injunctive relief, plaintiffs will suffer irreparable harm by having their First Amendment right to engage in peaceful political protest activities in traditional public forums violated. There is no adequate remedy at law for these First Amendment violations.

CAUSES OF ACTION

55. Defendants' actions have violated, and continue to violate, plaintiffs' First Amendment rights to peacefully assemble, speak and petition for redress of grievances, which rights are guaranteed by the First and Fourteenth Amendments to the United States Constitution and for which remedies are provided by 42 U.S.C. § 1983.

56. In denying protesters in Philadelphia access to space open to the general public or to those wishing to convey a message of support for the current Presidential administration, defendants City of Philadelphia and Philadelphia Police Department have violated this Court's Order in *Pledge of Resistance v. We the People 200*, et al.

Relief

Based on the foregoing, plaintiffs respectfully pray that this Court:

A. Declare that the Secret Service's policy and/or practice of discriminating against peaceful political protesters in either of the two forms, i.e., by requiring, or directing and encouraging municipal police departments to require: (1) plaintiffs and other protesters to move further from the location of the official and/or the event, allowing people who express views that support the government to remain closer; and (2) everyone expressing a view – either critical or supportive of the government -- to move further away, leaving people who merely observe, but publicly express no view to remain closer, violates the First Amendment; and

B. Grant plaintiffs' preliminary and permanent injunctive relief, prohibiting defendant Secret Service its subordinate, agents and those acting in concert with it from requiring, or directing and encouraging municipal police departments to require (1) plaintiffs and other protesters to move further away from the location of the official and/or the event, allowing people who support the government to remain closer; and (2) everyone expressing a view – either critical or supportive of the government -- to move further away, leaving people who merely observe, but publicly express no view to remain closer, and

C. Grant plaintiffs preliminary and permanent injunctive relief requiring all of the defendants to comply with this Court's Order of November 24th, 1988 in *Pledge of Resistance v. We the People 200*, et al. with regards to demonstrations in Philadelphia; and,

- D. Grant plaintiffs such other relief as they may be entitled to; and,
- E. Award plaintiffs reasonable attorneys' fees and costs.

Respectfully submitted,

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