

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

INTERNATIONAL WOMEN'S DAY MARCH)	
PLANNING COMMITTEE , an unincorporated)	
association, and SAN ANTONIO FREE SPEECH)	
COALITION , an unincorporated association,)	
)	
Plaintiffs,)	Civil Action No. SA-07-CA-0971-XR
vs.)	Second Amended Complaint For
CITY OF SAN ANTONIO,)	Declaratory and Injunctive Relief
)	
Defendant.)	

PLAINTIFFS' SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE:

NOW COME the **International Women's Day March Committee** and the **San Antonio Free Speech Coalition**, Plaintiffs herein, and file this Second Amended Complaint, praying relief from this Court. With this Second Amended Complaint, Plaintiffs challenge, under 42 U.S.C. §1983, City of San Antonio Ordinances regarding marches and parades on public streets, including the Amended Parade Ordinance enacted by the San Antonio City Council on March 13, 2008, the Parade ordinance enacted on November 29, 2007, and the Parade Ordinance enacted on February 4, 1988, as unconstitutionally burdening access to the streets, a traditional public forum, for expressive marches and parades, in violation of the rights to free speech, assembly, and equal protection under the First and Fourteenth Amendments to the United States Constitution. In support thereof, Plaintiffs allege and would show as follows:

I. JURISDICTION AND VENUE

1. The United States District Court has jurisdiction in this case under 28 U.S.C. §§ 1331, 1367,

1988, 2201, 2202. Venue is proper in the United States District Court for the Western District of Texas under 28 U.S.C. §1391 because the acts and omissions at issue in this case occurred within the geographical boundaries of the District.

II. PARTIES

PLAINTIFFS:

2. Plaintiff International Women's Day March Planning Committee is an unincorporated association formed in 1985 for the purpose of organizing a public march in San Antonio commemorating International Women's Day, an internationally recognized day honoring women around the world. International Women's Day has been observed around the world since the early 1900s. The International Women's Day March Planning Committee organized a march held in San Antonio in 1985 and an annual march held each year from 1992 on. On March 8, 2008, the Committee held its 18th International Women's Day March in San Antonio. The purpose of the International Women's Day March is to express solidarity with all women and to educate participants and the general public about issues affecting women in San Antonio and around the world. Service on the International Women's Day March Planning Committee may be achieved by service upon attorney Amy Kastely, at de la Riva & Associates, 405 N. St. Mary's, Suite 110, San Antonio, Texas 78205.
3. Plaintiff San Antonio Free Speech Coalition is an unincorporated association formed for the purpose of promoting and protecting free speech in San Antonio. Members of the Free Speech Coalition are organizations and individuals who have applied in the past and/or intend to apply in the future for permits to march, parade, or race on the public streets in San

Antonio for the purpose of raising public awareness of various political, social, economic, and environmental issues. Service upon the San Antonio Free Speech Coalition may be achieved by service upon attorney Amy Kastely, at de la Riva & Associates, 405 N. St. Mary's, Suite 110, San Antonio, Texas 78205.

DEFENDANT:

4. Defendant City of San Antonio (hereinafter the "City") is a municipality and a "person" capable of acting under color of law. In all of the acts alleged herein, the City and its agents, including its governing body, the San Antonio City Council; the presiding officer of the City Council, Mayor Phil Hardberger; the ten individual Council Members; City Manager Sheryl L. Sculley, and Chief of Police, William P. McManus, acted under color of law, pursuant to a policy or practice of the City.
5. Service of process on the Defendant City of San Antonio may be made by service on City Clerk Leticia M. Vacek, at City Hall, 100 Military Plaza, San Antonio, Texas 78205.

III. FACTUAL ALLEGATIONS

6. The paradigm public forum for free speech and associative expression in San Antonio is the public streets. Marches and parades in the public streets have long been a way for groups, particularly groups that lack governmental or institutional power and resources, to express their views and to inform other members of the public about issues of importance to our communities. To make access to public street marches available only to those with political influence or financial wealth is to profoundly limit freedom of speech and the quality of public debate in San Antonio.
7. On or about February 4, 1988, the San Antonio City Council enacted Ordinance Number 66526 to be known as the "Parade Ordinance of the City." (hereinafter the "1988 Parade

Ordinance”). The 1988 Parade Ordinance imposed a parade permit requirement (§19-433); defined a permit application fee ranging from \$50 to \$200 (§19-435(4)); required those permit holders whose events were “nonpolitical in nature” to pay for the costs of “barricading, policing, and cleaning-up the parade route” (§19-440(b)); and exempted “parades of a political nature” from the payment the enumerated costs. (§19-440(b)). A copy of the 1988 Parade Ordinance is attached hereto as Exhibit A.

8. For at least the last 5 years, the City has interpreted the exemption from costs for “parades of a political nature” in the 1988 Parade Ordinance to apply only to “election-related” parades. City officials have told Plaintiff International Woman’s Day Planning Committee and members of Plaintiff San Antonio Free Speech Coalition on numerous occasions that they may not hold a street march unless they are prepared to pay several thousands of dollars. In fact, all of the marches, parades, and races organized by members of the International Women’s Day March Committee and the Members of the San Antonio Free Speech Coalition are “parades of a political nature,” and were exempted from costs.
9. The amount of costs charged by the City under the 1988 Parade Ordinance was left to the discretion of the Chief of Police. (§19-440(b)).
10. In addition, the 1988 Parade Ordinance exempted “parades authorized by separate ordinance” from its cost requirements. Under this provision, City officials have repeatedly waived costs for those street marches that the City Council or some individual official has found worthy of special access to the streets.
11. On November 29, 2007, the San Antonio City Council adopted a new Ordinance regarding marches and parades on public streets in San Antonio. This Ordinance is entitled “*An Ordinance Repealing Article XII (Parades) and Article XIII (Run, Walk, and Cycling Events*

in Chapter 19 of the City Code; and Creating Article XVII (Parades, Runs, Walks And Related Events) in Chapter 19 of the City Code; and Providing for Certain Exemptions and Criminal Penalties for Violations; and Directing City Clerk to Publish Notice of this Ordinance as Required by the Charter of the City of San Antonio and the Laws of the State of Texas” (hereinafter the “2007 Parade Ordinance”). A copy of the 2007 Parade Ordinance is attached hereto as Exhibit B.

12. On March 13, 2008, following this Court’s Decision on Plaintiffs’ Motion for Preliminary Injunction, the San Antonio City Council enacted an amended version of the 2007 Parade Ordinance (hereinafter referred to as the “2008 Parade Ordinance”). A copy of the 2008 Parade Ordinance, marked to show changes from the 2007 Parade Ordinance is attached hereto as Exhibit C.
13. The 2008 Parade Ordinance directs the Chief of Police to issue a Standard Operating Procedure for issuance of permits and assessments of traffic control costs. On June 23, 2008, the Chief of Police issued Procedure 214: Processions (Parades, Runs, Walks, and Cycling Events) (hereinafter referred to as “SAPD Procedure 214”). A copy of SAPD Procedure 214 is attached hereto as Exhibit D.
14. The 2008 Parade Ordinance requires organizers of public marches and other events planning to use the public streets to apply to the Chief of Police or his delegate for a “Procession Permit” (§19-631). The fee for this permit is \$75. (§19-633(F)).
15. The 2008 Parade Ordinance provides that the permit requirement does not apply to: “(1) the movement of persons in an orderly, formal manner from a point of origin to a point of termination on a sidewalk, so long as the movement does not impede the normal flow or regulation of pedestrian or vehicular traffic; or (2) a public assemblage that does not involve

the movement of persons in an orderly, formal manner from a point of origin to a point of termination.” (§19-632)

16. In addition, the 2008 Parade Ordinance requires most permit holders to pay the costs for “(1) providing traffic control devices for the procession route in accordance with section 19-66 of this chapter; (2) providing traffic control personnel, whether on duty or on overtime, for the procession route; and (3) cleaning up the procession route.” (§19-636(B)).

17. The cost of traffic control barriers is determined by

18. The number of police officers and traffic control devices amount of these costs is determined by the Chief of Police, who is granted broad discretion to determine costs “based on the proposed route, time of day, time of year, and anticipated number of individuals in the procession.” (§19-636(B)). Costs for events comparable to those organized by members of the Plaintiff San Antonio Free Speech Coalition in the past have ranged from approximately \$4,000 to over \$20,000.

19. The 2008 Parade Ordinance defines “First Amendment Activity” as “all expressive and associative activity that is protected by the United States and Texas Constitutions, including speech, press, assembly, and the right to petition, but not including commercial advertising.” (§19-630(6)). The City will not charge “First Amendment events” for the first \$3,000 of the cost of traffic control barriers and traffic control personnel. (§19-636(B)). Based on past events, then, it is likely that street marches will be charged between \$1,000 and \$17,000. The 2008 Parade Ordinance does not include any provision for waiver or reduction of these costs for groups without resources to pay these fees.

20. If the 2008 Parade Ordinance is enforced against Plaintiff International Women’s Day March Committee and members of Plaintiff San Antonio Free Speech Coalition, they will be unable

to afford access to the public streets, a traditionally important public forum. Moreover, mere passage of the 2008 Parade Ordinance will significantly chill free speech efforts throughout San Antonio. The “free alternative” of a “sidewalk march” identified in the 2008 Parade Ordinance is not a comparable alternative to a march in the public streets. Moreover, it is virtually impossible to conduct a “sidewalk march” without interviewing with pedestrian and vehicular traffic and sidewalk marches are dangerous, particularly for elderly or physically disabled individuals.

21. Certain marches and parades, which the 2008 Parade Ordinance describes as having “broad appeal,” will not be charged any of the costs of traffic control personnel and/or traffic control devices. These are the Diez y Seis Parade, organized by the Avenida Guadalupe Association; the Martin Luther King March, organized by the Martin Luther King, Jr. Memorial City-County Commission (which is not an official City Commission); and the Veterans Day Parade, organized by the United States Military Veterans Parade Association. In addition, City representatives have announced that the City intends to continue allowing the Cesar Chavez March, organized by the Cesar Chavez March Committee and the 60+ Mardi Gras Parade, organized by the 60+ Mardi Gras Committee access to the streets without cost. And, on information and belief, the City intends to allow free or reduced cost access to public streets for the Fiesta Flambeau Parade, organized by the Fiesta Flambeau Association and the San Antonio Commission (which is not an official City Commission); the Battle of the Roses Parade, organized by the Battle of the Roses Association; the King William Parade, organized by the King William Association; and the San Antonio Marathon, organized by the San Antonio Marathon Partnership, involving the San Antonio YMCA, the San Antonio Road Runners, and the City of San Antonio.

IV. LEGAL CLAIMS

FIRST CLAIM FOR RELIEF: VIEWPOINT-BASED DISCRIMINATION IN VIOLATION OF FIRST AMENDMENT AND CIVIL RIGHTS ACT OF 1866

22. As alleged in detail in the Factual Allegations of this complaint, which are incorporated herein, the 2008 Parade Ordinance permits access to public streets on different terms based on the content of the message being conveyed by different marches, parades, and races, in violation of Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983.

23. In addition, the 1988 Parade Ordinance permitted access to public streets on different terms based on the content of the message being conveyed by different marches, parades, and races, in violation of Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983.

SECOND CLAIM FOR RELIEF: UNREASONABLE PRIOR RESTRAINT IN VIOLATION OF FIRST AMENDMENT AND CIVIL RIGHTS ACT OF 1866

24. As alleged in detail in the Factual Allegations of this Complaint, which are incorporated herein, the 2008 Parade Ordinance, enacted by Defendant City, imposes unduly burdensome prior restraints on access to public streets for free speech marches, parades, and races such as those organized by members of the International Women's Day March Committee and the San Antonio Free Speech Coalition, in violation of Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983.

25. In addition, the 1988 Parade Ordinance, as interpreted by City officials, imposed unduly burdensome prior restraints on access to public streets for free speech marches, parades, and races such as those organized by members of the International Women's Day March

Committee and the San Antonio Free Speech Coalition, in violation of Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983.

THIRD CLAIM FOR RELIEF: UNREASONABLE PRIOR RESTRAINT IN VIOLATION OF FIRST AMENDMENT AND CIVIL RIGHTS ACT OF 1866

26. As alleged in detail in the Factual Allegations of this Complaint, which are incorporated herein, the 2008 Parade Ordinance, enacted by Defendant City, grants unduly broad discretion to a city official, the Chief of Police, to determine the cost imposed on permit applicants desiring to exercise their free speech right to march on the public streets, in violation of Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983.

27. In addition, the 1988 Parade Ordinance granted unduly broad discretion to a city official, the Chief of Police, to determine the cost imposed on permit applicants desiring to exercise their free speech right to march on the public streets, in violation of Plaintiffs' rights to freedom of speech under the First Amendment to the United States Constitution and 42 U.S.C. §1983.

FOURTH CLAIM FOR RELIEF: VIOLATION OF FOURTEENTH AMENDMENT EQUAL PROTECTION AND CIVIL RIGHTS ACT OF 1866

28. As alleged in detail in the Factual Allegations of this complaint, which are incorporated herein, the 2008 Parade Ordinance, enacted by Defendant City, distinguishes between permit applicants in the costs they will have to pay under a Parade Permit based on the content of their message and/or the degree of their political influence, and thus is without rational basis, in violation of Plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

29. In addition, as interpreted by City officials, the 1988 Parade Ordinance distinguishes between

permit applicants in the costs they will have to pay under a Parade Permit based on the content of their message and/or the degree of their political influence, and thus is without rational basis, in violation of Plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

V. PRAYER FOR RELIEF

30. Plaintiffs International Women's Day March Committee and the San Antonio Free Speech

Coalition request this Court for relief in the following forms:

- A. That the Court declare that the 2008 Parade Ordinance and the City's interpretation and application of the 1988 Parade Ordinance violate the First Amendment and Fourteenth Amendment rights of the Plaintiffs;
- B. That the Court issue a Permanent Injunction, enjoining Defendant City of San Antonio and its agents and employees, including Mayor Phil Hardberger, City Council Members, City Manager Sheryl Sculley, and Chief of Police William McManus from enforcing or in any way implementing the 2008 Parade Ordinance or continuing to interpret the 1988 Parade Ordinance in such a way as to exclude Plaintiffs' First Amendment street marches from the category of "parades of a political nature;"
- C. That the Court award Plaintiffs their costs of suit and attorneys' fees under 42 U.S.C. §1988; and
- D. That the Court order such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on, July 11, 2008, I served a copy of Plaintiffs' Second Amended Complaint on Assistant City Attorneys Deborah Klein and Cathy Sheehan, Attorneys for Defendants by certified mail, return receipt requested.

Amy Kastely