

**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 Planning Committee** and the **San Antonio Free Speech Coalition**, Plaintiffs herein, and file this Second Amended Complaint, praying relief from this Court. Plaintiffs are organizers and participants in marches on public streets and sidewalks in San Antonio that are held to express the beliefs and opinions of participants on issues of importance to our communities, including but not limited to U.S. foreign policy; war; immigration law and enforcement; human and civil rights; violence against women, lesbians, gay men, bisexuals and transsexuals; access to medical care; reproductive rights; education funding; neighborhood schools; affordable housing; police brutality; workplace safety; living wage; environmental justice media reform; and many others (hereinafter referred to as "political marches" or "expressive marches").

With this Second Amended Complaint, Plaintiffs challenge, under 42 U.S.C. §1983, City of San Antonio Ordinances regarding marches on public streets and sidewalks, 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 public streets and sidewalks, 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 political 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 hold political and expressive marches, parades, or races on public streets and sidewalks 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 and sidewalks. Political and expressive marches 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, officers in the San Antonio Police Department have interpreted

the exemption from costs for “parades of a political nature” in the 1988 Parade Ordinance to apply only to “candidate or 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 political or expressive march unless they are prepared to pay thousands of dollars. In most cases, plans for political or expressive marches were dropped. In a few others, organizers paid thousands of dollars to provide an opportunity for San Antonians to exercise their fundamental rights to free speech and assembly.

9. On November 29, 2007, the San Antonio City Council adopted Ordinance No. 2007-11-29-1193, regarding marches and parades on public streets and sidewalks in San Antonio (hereinafter the “2007 Parade Ordinance”). A copy of the 2007 Parade Ordinance is attached hereto as Exhibit B.
10. On March 13, 2008, following this Court’s Decision on Plaintiffs’ Motion for Preliminary Injunction, the San Antonio City Council enacted Ordinance No. 2008-03-13-0201, 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.
11. The 2008 Parade Ordinance defines a “procession” to be “a group of persons moving along, by whatever means, in an orderly, formal manner on **any street, alley, or public thoroughfare** from a point of origin to a point of termination **or** a group of persons moving along, by whatever means, in an orderly, formal manner **anywhere else in the city** from a point of origin to a point of termination **in such a way as to impede the normal flow or regulation of pedestrian or vehicular traffic**” (§19-630(4) (emphasis added)). And it exempts “(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” from the permit requirement. (§19-632)(emphasis added)).
12. The 2008 Parade Ordinance requires all organizers of “processions” 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)).

13. In addition, the 2008 Parade Ordinance provides that “each permit holder” must 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)).
14. According to recent San Antonio Police Department estimates, organizers of political and expressive marches comparable to those organized by the International Woman’s Day March Planning Committee and by members of the Plaintiff San Antonio Free Speech Coalition will be charged from approximately \$4,000 to over \$30,000.
15. The 2008 Parade Ordinance provides that 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 San Antonio Police Department estimates, then, it is likely that organizers of political and expressive marches will face charges of between \$1,000 and \$27,000.
16. The 2008 Parade Ordinance does not include any provision for waiver or reduction of these costs for groups without resources to pay these fees.
17. 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 determination whether a particular march is a “First Amendment procession” or “Non-First Amendment procession” will affect the costs charged to the organizer (because the City will absorb the for \$3,000 for “First-Amendment processions”) and will determine crucial deadlines for permit applications, yet the Ordinance provides little more than a circular definition and offers no process through which an individual applicant can obtain a definitive ruling on the issue.
18. 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. (§19-636). 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.

19. The 2008 Parade Ordinance continues to vest broad discretion in individual Police officers to determine the costs to be charged to each permit holder. And SAPD Procedure 214, which defines five traffic control designs of increasing magnitude, again grants wide, unguided discretion to the deciding officer.
20. If the 2008 Parade Ordinance is enforced against political and expressive marches organized by Plaintiff International Women's Day March Committee and by members of Plaintiff San Antonio Free Speech Coalition, they will be effectively barred from the traditional public forum of public streets and sidewalks.
21. Three political marches, 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.
22. In addition, City officials interpret the 2008 Parade Ordinance to allow waiver of the permit requirement and/or the charges for police services and traffic control devices by separate action of the City Council, as the City Council has done for the Cesar Chavez March, the 60+ Mardi Gras Parade, Fiesta Flambeau Parade, the Battle of the Roses Parade, the King William Parade, the San Antonio Marathon, the Pilgrimage to the Alamo, and numerous others.
23. City officials also interpret the 2008 Parade Ordinance to allow waiver of the permit requirement and/or the charges for police services and traffic control devices, in whole or part by informal arrangement with the Police Department, Mayor's Office, or other City officials, as has been done for the Blue Santa Parade, the San Fernando Good Friday Parade, Rodeo events, the Police Officers Memorial Run, and many others.
24. Indeed, under the City's interpretation of its Parade Ordinances, the vast majority of "processions" have received police services without charge and only a very few have been made to pay.

IV. LEGAL CLAIMS

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

25. As alleged in detail in the Factual Allegations of this complaint, which are incorporated herein, the 2008 Parade Ordinance permits access to public streets and sidewalks 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 and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.
26. In addition, the 1988 Parade Ordinance permitted access to public streets and sidewalks 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 and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

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

27. 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 and sidewalks for free speech marches, parades, and races such as those organized by members of the International Women's Day March Planning Committee and the San Antonio Free Speech Coalition, in violation of Plaintiffs' rights to freedom of speech under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.
28. In addition, the 1988 Parade Ordinance, as interpreted by City officials, imposed unduly burdensome prior restraints on access to public streets and sidewalks 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 and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

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

29. 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 and Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.
30. 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 and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

FOURTH CLAIM FOR RELIEF: IRREPARABLE VAGUENESS IN THE DEFINITION OF
"FIRST AMENDMENT PROCESSION" IN VIOLATION OF FIRST AND FOURTEENTH
AMENDMENTS AND CIVIL RIGHTS ACT OF 1866

31. As alleged above and incorporated herein, 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 determination whether a particular march is a "First Amendment procession" or "Non-First Amendment procession" will affect the costs charged to the organizer (because the City will absorb the for \$3,000 for "First-Amendment processions") and will determine crucial deadlines for permit applications, yet the Ordinance provides little more than a circular definition and offers no process through which an individual applicant can obtain a definitive ruling on the issue.
32. This excessive vagueness violates Plaintiffs' rights to freedom of speech under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

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

33. 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.
34. 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

35. 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, the 2007 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, the 2007 Parade Ordinance, or

continuing to interpret the 1988 Parade Ordinance in such a way as to exclude the political and expressive marches organized by members of the Plaintiffs 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,

 /s/ Amy Kastely

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CERTIFICATE OF SERVICE

I hereby certify that on, July 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to Assistant City Attorneys Deborah Klein and Cathy Sheehan, Attorneys for Defendants.

/s/ Amy Kastely
Amy Kastely