

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL COUNCIL OF ARAB AMERICANS and
ACT NOW TO STOP WAR & END RACISM Coalition,

04 CIV _____

Plaintiffs,

COMPLAINT

- against -

**JURY TRIAL
DEMANDED**

THE CITY OF NEW YORK, MICHAEL BLOOMBERG,
Mayor of the City of New York in his official capacity,
CITY OF NEW YORK DEPARTMENT OF PARKS
AND RECREATION, and the CENTRAL PARK
CONSERVANCY,

Defendants.

_____ X

NATURE OF THE CASE

1. Plaintiff National Council of Arab Americans (NCA) applied for a permit in January 2004 to hold a civil rights rally on the Great Lawn of Central Park calling for an end to racial and religious profiling and to affirm that the Arab American and Muslim community, as equal members of society, have full access to all of the constitutional rights afforded to all members of society.
2. Plaintiff A.N.S.W.E..R Coalition (Act Now to Stop War & End Racism), which was formed in the days after September 11, has been involved in organizing most of the major anti-war demonstrations of the last three years in the United States.
3. The plaintiffs planned to rally together on August 28, 2004, the 41st anniversary of the historic 1963 civil rights March on Washington, and at the beginning of the Republican

National Convention, to demonstrate that the people of the U.S. from all communities and backgrounds stand in support of civil rights and civil liberties for all the people in the United States. The purpose of the rally was distinctive in its content, in that it planned an assembly of the most targeted and vulnerable communities - - Arabs, Arab-Americans, and Muslims - - standing shoulder to shoulder in solidarity with thousands of others, collectively demanding an end to the U.S. Government's wars of aggression and disregard of civil rights and liberties.

4. Plaintiffs seek to utilize the area of Central Park known as The Great Lawn for the purposes of engaging in this lawful and peaceful political assembly and demonstration which was timed in connection with the start of the Republican National Convention.
5. The Parks Department, however, has steadfastly refused to allow the Great Lawn to be used as a site of peaceful political assembly and free speech.
6. The Parks Department has denied plaintiffs' permit request, asserting that the Great Lawn cannot "accommodate an event of the nature" of that submitted by plaintiffs, a lawful political assembly in support of civil rights and civil liberties, in defense of and solidarity with victimized Arab and Muslim communities, and in opposition to Republican Party politics, even though *plaintiffs' planned assembly (75,000) is smaller than that of prior authorized events and concerts, and is within and under the stated operational capacity of the Great Lawn (stated by the City to be 80,000, although apparently much higher)*.
7. In 1982 the Great Lawn held an anti-nuclear demonstration of at least 700,000, in 1991 held an audience of 600,000 for a Paul Simon concert, in 1995 held a Papal Mass of more than 100,000, and in 1997 held 250,000 for a Garth Brooks concert.

8. In 1997 the Great Lawn underwent a renovation that was largely funded by corporate donors.
9. Since its renovation, the Great Lawn has continued to be the site of mass assemblies and, in particular, concerts, including for the opera, the Philharmonic orchestra, events sponsored by Time-Warner, among other events. Most recently, the City endorsed a corporate-sponsored rock concert on the Great Lawn that according to the Park Department held at least 85,000 people.
10. The express purpose of the renovation was to make the Great Lawn more study and appropriate for use by millions. Mayor Giuliani stated at the time of the ribbon cutting ceremony, “I often say New York City is the Capital of the World. With the restoration of the Great Lawn – the site where so many historic events have taken place, Pope John Paul II’s mass, Disney’s Pocahontas, and the Luciano Pavarotti and Paul Simon concerts - - 20 million park visitors a year will once again have the chance to visit the jewel of the City’s parks.”
11. The City’s October 10, 1997 press release at the unveiling boasted of the sturdiness and design of the Great Lawn to withstand intense use by millions of visitors, and to return “in full swing” to the “vigorous use” and activities to which the Great Lawn has historically been host.

“The Great Lawn consists of more than 500,000 square feet of hearty Kentucky Bluegrass, 25,000 cubic yards of soil specifically engineered to resist compaction, 22,500 linear feet of storm turn and sub-surface drainage lines, and 11,000 linear feet of irrigation lines with 275 pop-up sprinklers. While the majority of the construction is complete and the Lawn appears ready, the grass will need a full year [from 1997] to develop the deep roots that will enable it to withstand the vigorous use it will get when activities return in full swing.”

12. In 2003, the Parks Department permitted America Online (AOL) to hold a rock concert on the Great Lawn, featuring the Dave Matthews band, and drawing no less than 85,000 rockers (by the Parks Department's own estimate). That concert kicked off AOL's release of their "Version 9.0 optimized" software, and encouraged consumers to purchase AOL's high speed internet service. As part of this commercial venture, AOL subscribers were able to access a live broadcast of this popular concert performance over AOL's high speed internet service.
13. The Parks Department and Mayor Bloomberg, however receptive to the use of the Great Lawn for the benefit of large corporations and certain mass assemblies and events, refuses to allow the Great Lawn to be used for plaintiffs' and others' political assembly and free speech activities.
14. These free speech events, however, do not promote commercial services, nor do they purport to have corporate sponsorship, nor have event organizers bought access to Central Park through massive financial donations.
15. Plaintiffs' planned event is a gathering of the people for the most fundamental of all democratic exercises, political free speech, in the quintessentially appropriate traditional public forum for such speech, the public parklands.
16. Central Park is for the people. The Mayor cannot exclude from its use or access those who criticize the U.S. government, who stand in solidarity with Arabs and Muslims, or who dissent from the policies of Mr. Bloomberg's Republican Party or the Bush Administration. Those corporations which gave funds for the renovation of the Great Lawn did not acquire ownership or privatize Central Park such that they can selectively

exclude from access to the Great Lawn those with whom they disagree, or who stand together as and in solidarity with Arabs, Arab Americans and Muslims, who many believe have been violently victimized through civil rights and liberties violations and war policies.

17. Through the use of a regulatory system that vests unbridled and unfettered discretion in city administrators, the City and Mayor have unconstitutionally denied plaintiffs the right to access the Great Lawn for their peaceful political assembly. The Mayor, for his part, has created a climate of fear, apprehension and confusion, stating that he will deploy the police force to forcibly arrest any groups of protestors in the park that number 20 or more. The park remains open for busloads of tourists, regardless of number, provided they do not become identified by police as protestors.
18. Plaintiffs bring this constitutional rights litigation in the interest of all those in New York who wish to avail themselves of access to the Great Lawn and New York City for lawful political assembly on the same terms and conditions as access is afforded others, including corporate or political favorites of the Mayor or the Central Park Conservatory.
19. Plaintiffs seek preliminary injunctive relief to enjoin defendants from refusing to grant the requested permit by plaintiffs, to mandate the issuance of the permit on the terms requested, and to enjoin enforcement of the existing permit regulatory system as applied to political assemblies and demonstrations until such time as a non-discretionary and constitutionally sound permitting system is effected.

JURISDICTION

20. This civil rights action is brought pursuant to 42 U.S.C. § 1983 and §1988. The court has

subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and §1343(3) and (4).

21. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§2201 and 2202 and Fed.R.Civ.P. 57.

VENUE

22. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1391.

JURY DEMAND

23. Plaintiffs demand a trial by jury of all issues so triable in this action.

PARTIES

24. Plaintiff NATIONAL COUNCIL OF ARAB AMERICANS (NCA) is a national membership and chapter-based association of individuals and organizations that seeks to serve the Arab American community in various forms. Its services include need-based, legal defense, educational, advocacy, and grassroots empowerment on the basis of full constitutional belonging. The NCA is headquartered in the city of Davis, Yolo County, State of California. It has affiliated membership and a chapter in New York.
25. Plaintiff A.N.S.W.E.R. COALITION (Act Now to Stop War & End Racism) is a grassroots organization that engages in community and national political organizing and activism including carrying out meetings, protests, mass demonstrations, and other educational activities in opposition to war and racism. A.N.S.W.E.R.'s national headquarters is in Washington, D.C. It has affiliated individuals and organizers in New York.
26. Defendant CITY OF NEW YORK is a municipal corporation within the State of New

York.

27. Defendant MICHAEL BLOOMBERG is Mayor of the City of New York, the chief policy-making official for the City and its departments, including during the events alleged in this complaint. He is sued in his official capacity.
28. Defendant PARKS AND RECREATION DEPARTMENT is an agency of the City of New York, which is responsible for promulgating and enforcing regulations regarding use of and access to Central Park and its Great Lawn.
29. Defendant NEW YORK CITY POLICE DEPARTMENT (NYPD) is an agency of the City of New York, which is responsible for conducting arrests of persons in Central Park and acted in coordination with the Parks & Recreation Department regarding its determinations concerning demonstrations in Central Park.
30. Defendant CENTRAL PARK CONSERVANCY is a non-profit corporation that is contracted with by the City of New York to manage Central Park. It is made up of members who have donated funds to the Central Park Conservancy.

THE REGULATIONS

31. The City of New York has promulgated regulations that generally require and authorize the issuance of permits for the use of public parkland, including the Great Lawn, for groups as small as 21 persons.
32. That scheme is content-based, fails to require administrators' decisions to be constrained by narrow, objective and definite standards, and affords City officials unfettered and unconstrained discretion to issue or decline to issue permits, including authority to waive or vary the applicability of *any* regulatory provisions or rules to allow favored events to

occur, even where such events conflict with the purported requirements and constraints on the use of that space.

33. By way of one example, the regulatory scheme requires that any group of persons numbering more than 20 who seek to assemble and occupy public park space and express “views and grievances” must first apply for and receive a written permit. §1-05(a)(1).
34. Any group of persons numbering more than 20 who seek to assemble and occupy public park space for “casual park use by visitors or tourists” are explicitly exempt from the permitting requirements. §1-02. This is a content-based distinction in the permitting scheme.
35. There is no compelling, significant or legitimate government interest that justifies distinguishing between busloads of tourists or visitors who enter the park wearing t-shirts that say “I ♥ New York” and the same number of tourists or visitors in the park wearing t-shirts that say “Bring the Troops Home Now!” This is no insignificant issue when the Mayor has declared the intention to make arrests if police observe 20 or more persons deemed to be protestors who happen to be in the park near each other, or gathered together.
36. Beyond the facial distinctions made within the plain language of the regulations, in the administration of this scheme the City has relied on distinctions based upon “the nature” of the demonstration event as the basis for plaintiffs’ permit denial, as discussed below.
37. The regulatory scheme is content based. The scheme is not necessary to serve a compelling governmental interest nor is it narrowly drawn to achieve that end.
38. The regulatory scheme is unconstitutional facially and as applied. It authorizes prior

restraint of free speech without prescribing adequate, narrow, objective and definite standards to guide the licensing authority and to prevent censorship or abridgment of First Amendment freedoms.

39. Even if considered, *arguendo*, to be content-neutral, the regulatory scheme is (besides not being content neutral, in fact) not narrowly tailored to serve a significant government interest, leaving open ample alternatives for communication.
40. In its application and administration, City administrators have failed to afford all permit applicants uniformity of treatment, free from improper or inappropriate considerations or unfair discrimination. As discussed below, plaintiffs have been discriminatorily denied issuance of a permit on the basis of the content or nature of their activities as a planned political protest.

THE FACTS OF THE PERMIT APPLICATION AND DENIAL

41. On January 7, 2004, the National Council of Arab Americans, through its representatives Elias Rashmawi and Brian Becker, filed an application with the New York City Department of Parks and Recreation to hold a civil rights rally on the Great Lawn of Central Park or in the alternative Sheep Meadow.
42. The civil rights rally was to call for an end to racial and religious profiling and to affirm that the Arab American and Muslim community, as equal members of society, have full access to all of the constitutional rights afforded to all members of society.
43. Plaintiffs NCA and A.N.S.W.E.R. planned to rally together to demonstrate that the people of the U.S. from all communities and backgrounds stand in support of civil rights and civil liberties for all the people in the United States. The purpose of the rally was

distinctive in its content, in that it planned an assembly of the most targeted and vulnerable communities - - Arabs, Arab-Americans, and Muslims - - standing shoulder to shoulder in solidarity with thousands of others, collectively demanding an end to the U.S. Government's wars of aggression and disregard of civil rights and liberties.

44. According to the NYC Park Department, the application was to be processed in 5-7 days from its submission on January 7, 2004. They did not do so.
45. More than two months later, on March 13, 2004, the Parks Department sent a letter to Mr. Rashmawi stating that "Parks & Recreation is not able to make a determination as to the application referenced above at this time."
46. Were the submitted application inconsistent with the nature or capacity of the Great Lawn, the City would have known this at this time and so stated. While pointing out undefined "issues" related to the capacity Great Lawn and "high risk of damage," the City did not preclude or deny the permit as inconsistent with the nature or capacity of the Great Lawn. Instead, the City asserted that it had decided not to decide at that time, in violation of its promulgated "First Come, First Serve" policy, claiming "it was too soon to know how many events are being planned and how many permit applications will have to be considered for any given date and time."
47. More than three months after that, the Parks Department sent a second letter denying the permit request pursuant to sections 2.08(c) (1), (2) and (5) of the Parks Rules & Regulations. The sole descriptive basis provided for denial was that "Neither the Great Lawn nor the Sheep Meadow can accommodate *an event of the nature* you are planning." (emphasis added). The City stated that it was managing the Great Lawn so that

“restoration accomplished through significant public and private investment can be preserved.”

48. On June 25, plaintiff NCA appealed this determination by letter stating, “We are appealing this denial on the grounds that, *inter alia*, it is inconsistent with Parks Rules and Regulations, violative of the First Amendment and rights to free speech under other applicable laws, constitutes unconstitutional content based discrimination, violates procedural and substantive due process, is based on an unconstitutional permitting process, and constitutes selective and discriminatory denial of the right to use these parklands for a lawful political assembly that is consistent with the usage and suitability of the requested parkland.”
49. By letter dated June 30, 2004, the General Counsel for the Parks Department summarily upheld the denial of the permit stating that the basis for the denial was that “an event of the nature you are planning cannot be accommodated,” and that “your event would cause significant damage to the park.”
50. On July 1, 2004, plaintiff, through counsel, wrote to the Parks Department requesting disclosure of the criteria or substantive basis for the denial, and requesting the Parks Department identify in response any proposed alternative locations.¹ The Parks

¹ The letter stated, “I am in receipt of your June 30, 2004 in which you re-assert your summary denial of the right of the National Council of Arab Americans to hold a political assembly on the Great Lawn or Sheep Meadow in Central Park.

“The June 15 letter states as the sole basis for denying permit for the political assembly of the NCAA, that ‘an event of the nature you are planning’ cannot be accommodated. There is no criteria given for making this determination nor any explanation regarding what about the “nature” of the event violates the unstated and undefined criteria for denial of permit applications.

“As the nature of the event is political assembly, there appears to be no legitimate basis

Department refused to respond to this letter, or to provide the information requested therein.

51. Instead, two weeks later, it sent a brief letter in which it failed to provide the information requested or to identify any alternative sites.
52. Plaintiff attempted to contest and discuss this decision with defendant City of New York Parks and Recreation Department, who remained unwilling to provide any substantive or constitutionally permissible rationale for their decisions. Despite repeated request, the City refused to point to any constitutionally permissible authority or particular standards for its denial, except the apparent content based determination that they would not allow an **“event of that nature.”**
53. Thereafter the Department, through its Counsel, sent a letter late on Friday, August 6, 2004, suggesting that “even under optimum conditions,” it would not permit the use of the Great Lawn for the proposed political demonstration. The Parks Department asserted,

for the denial. Further the lack of criteria and unfettered decision-making that is apparently at use by the Parks Department would render any such denial unconstitutional and thus invalid.

“You assert that the appeal ‘did not present any information specifically addressing the ground for the denial and there is thus no basis for reversing our original decision.’ Please note, in this important respect, that your denial letter failed and refused to present any information specifically addressing the grounds for denial such that they could be specifically addressed in return.

“In case it was unclear to you from our appeal, it is our representation to you that there is nothing in the nature of this assembly which is inconsistent with the function and characteristics of the areas at issue. Your office has not presented even a single basis showing or claiming otherwise. We request that you reverse your decision.

“As we have stated previously, we are amenable to meeting with the Parks Department to facilitate this matter, but in order to proceed, we reiterate our request that you provide a basis for the denial of the requested permit in writing. Additionally, as we are unaware of any reasonable alternative to the locations requested, we request that you list and identify the alternative locations for which you would give the NCAA a permit to assemble so that those alternatives may be reviewed and evaluated.”

“The size of your client’s proposed event would likely cause significant damage to the Great Lawn and the surrounding landscapes. Such damage would probably require the closure of the entire lawn for a significant period of time, thereby denying New Yorkers and visitors alike the opportunity to appreciate and use the Great Lawn. In addition, our management criteria for the Great Lawn are not compatible with events that cannot be cancelled because of rain and cannot otherwise comply with our crowd control and security requirements even under optimum conditions.”

54. The A.N.S.W.E.R. Coalition has organized, and provided security for, demonstrations in numbers as large and larger than that requested for this permit, in both New York City and in Washington, D.C.
55. The Parks Department suggested that use of the Great Lawn for plaintiffs’ proposed assembly of 75,000 would risk turning the parkland into “a dust bowl.”
56. However, the permit application submitted by plaintiffs for a peaceful political assembly of 75,000 persons is consistent with the actual prior and permitted use of the space, including post-renovation those requested by more favored corporations or groups.
57. In 1982 the Great Lawn held an anti-nuclear demonstration of at least 700,000, in 1991 held an audience of 600,000 for a Paul Simon concert, in 1995 held a Papal Mass of more than 100,000, and in 1997 held 250,000 for a Garth Brooks concert.
58. Just last year, and after its renovation intended to allow “vigorous” use of the Lawn, the Great Lawn was used for a 2003 Dave Mathews concert sponsored by America Online for over 85,000 attendees, which City officials heralded as an appropriate and desirable use of the forum. In connection with that event, which was part of AOL’s marketing

campaign to encourage purchase of its new version and high speed internet service, Mayor Bloomberg explained, “New York City has always been a driving force in the music world, and Central Park, which has a long history of hosting major outdoor concerts, is the perfect setting for such an exciting event under the night sky.”

Commissioner Adrian Benepe beamed in his explanation of the appropriateness of the Great Lawn for such an assembly, “There is nothing more magical than enjoying a musical performance in Central Park, the envy of the world.” The Great Lawn is no less appropriate a site for a political assembly.

59. One operative difference characterizing the discriminatory treatment against plaintiffs is that the Republican Mayor of the City refuses to allow the Great Lawn to be used as a site of political dissent in support of civil rights and in opposition to the war and other policies of his Republican Party, which will be holding its quadrennial Republican National Convention that week in the City. The Central Park Conservatory (CPC) has explained its position that a mass demonstration is not appropriate for Central Park, including specifically the Great Lawn, by referencing the financial contributions it has received and used in the restoration and maintenance of the park. The CPC explains that the investment of donors “is enormous and one well worth protecting.” See Open Letter from the CPC, July 18, 2004, “The Right to Rally.” Clearly consideration is being given to the impact on the “investment” made by its donors and members. Although the corporate donors may feel a sense of private ownership over the Park and do not want to be “paying” to host a demonstration that may strongly advocate against their perceived interests the CPC may not act to deny protest permits on the Great Lawn in order to

protect its relationships with such donors. The Park remains a public forum for all and is not privatized or subject to the discriminatory urges of CPC's corporate sponsors.

60. As far as the City of New York and Mayor Bloomberg are concerned, they *will* authorize use of that very same space for a loud and boisterous night time rock concert (an event of an even *larger* size than that planned by plaintiffs) where one purpose of that concert is to promote commercial for-profit services. They *will* authorize use of that very same space (repeatedly) for assemblies and concerts open to the entirety of the public, where consumption of alcohol and wine is openly tolerated and/or promoted by government officials and event promoters, such as the opera. It *will* authorize use of that very same space for mass assemblies, concerts and events where explosive fireworks are authorized and discharged. It *will not* authorize use of that space for a peaceful political assembly of the nature proposed by plaintiffs.
61. Further, the Mayor has intentionally created an atmosphere of fear, apprehension and confusion calculated to suppress and dissuade protest in connection with the Republican National Convention.
62. The City's denial of plaintiffs' permit request, particularly in conjunction with the Mayor's stated intention to arrest any group of more than 20 assembled protestors in the Park, creates the specter of conflict, use of force and even possibly a police riot. This adversely affects the willingness of attendees, who are in the first case peaceful and law abiding protestors, to place themselves at risk for police abuse.
63. Organizing efforts have been severely disrupted by the City's denial and misconduct. This was a permit request submitted far in advance, in January, with sufficient time to engage

in the necessary organizing and coordinating efforts needed to both bring and welcome those who come from around the country to attend the demonstration, but to also assure those considering to come that the planned assembly is authorized and permitted and not likely to be the target of a police action.

64. In fact, the City has prohibited organizing efforts. New York makes it a violation of the law for event organizers to seek to pose or advertise or even publish on the Internet the location of any event requiring a permit where the organizers have been informed that the Department does not intend to issue such permit.

**CAUSE OF ACTION
(First Amendment to the U.S. Constitution; Equal Protection Clause)**

65. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 64, as if set forth herein.
66. Defendants violated the free speech, petitioning and assembly rights of plaintiffs arising pursuant to the First Amendment to the U.S. Constitution, the Equal Protection Clause of the Fourteenth Amendment, and 42 U.S.C. § 1983 by maintaining an unconstitutionally discretionary permitting system, through the operation of which plaintiffs have been discriminatorily denied a permit to use the Great Lawn.
67. Defendants unconstitutional conduct has proximately caused the plaintiffs to suffer injury and harm to their ability to plan and organize and execute the intended political protest on the Great Lawn, and plaintiffs have suffered compensable injuries and damages including the violation of their constitutional rights and any monetary damages² that exist after the

² Plaintiffs may file a supplemental complaint with a demand for monetary damages upon review and assessment after the planned protest date.

protest date.

WHEREFORE, the plaintiffs request that this Honorable Court:

- A. Issue injunctive relief to enjoin defendants from refusing to grant the requested permit by plaintiffs and to mandate the issuance of the permit on the terms requested;
- B. Issue injunctive relief to enjoin enforcement (by the City of New York or any agency of the City, including the Parks Department and the New York Police Department) of the existing permit regulatory scheme as applied to political assemblies and demonstrations until such time as a non-discretionary and constitutionally sound permitting system is effected;
- C. Award reasonable attorneys' fees and costs; and
- D. Any other relief the court deems just and appropriate.

Dated: August 13, 2004

Respectfully submitted,

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