

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

AUG 26 2008

DISTRICT COURT
SECOND JUDICIAL DISTRICT

By fb Deputy

File No. 62-CV-08-7982
Chief Judge Kathleen Gearin

Twin Cities Peace Campaign,
Welfare Rights Committee,
Cherene Horazuk, Mic Kelly, and Tracy Molm,

Plaintiffs,

vs.

ORDER

The City of Saint Paul, Minnesota,
Mayor Chris Coleman, Saint Paul Police
Chief John M. Harrington, Assistant Saint Paul
Police Chief Matthew D. Bostrom,

Defendants.

The above-entitled matter came on for hearing before the undersigned on August 25th, 2008 pursuant to Plaintiffs' motion for a preliminary injunction.

Appearing on behalf of the Plaintiffs was Bruce D. Nestor. Appearing in behalf of the Defendants was John T. Kelly, James Jerskey, and Cheri M. Sisk.

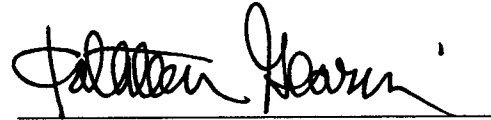
Based upon the files, records, and proceedings herein, the Court makes the following Order:

1. Plaintiffs' motion for a temporary injunction is denied.
2. The attached Memorandum is incorporated and made a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: 8-26-08

BY THE COURT



Kathleen Gearin
District Court Chief Judge

MEMORANDUM

On August 8th of 2008 Coleen Rowley, other individual Minnesota citizens, and the non-profit organization Impeach for Peace, filed a lawsuit in the Second Judicial District seeking injunctive relief regarding decisions of the City of Saint Paul and its police department concerning the size and location of the Public Viewing Area for the Republican National Convention. On August 11th two other non-profit organizations, Twin Cities Peace Campaign and The Welfare Rights Committee, as well as additional citizens, filed an almost identical lawsuit. On August 15th, 2008 the lead attorney for the Twin Cities Peace Campaign, et al., sent a letter to the Court and other parties joining in the preliminary injunction filed by the Plaintiffs in the Coleen Rowley, et al., lawsuit. Both in the letter and in its oral argument during the August 25th hearing, Mr. Nestor adopted the legal contentions and the relief sought by the parties in Court File No. 62-CV-08-7976. The Convention will start on September 1st, Labor Day, less than four working days away. The Court had a telephone conference scheduling call with the parties on August 13th. During that call, August 25th was chosen as the actual hearing date. All parties agreed that to have the hearing sooner would have not allowed for sufficient briefing.

The Plaintiffs seek an order from this Court expanding the size of the present Public Viewing Area and creating an additional Public Viewing Area. The main point of contention is in the area of West 7th Street and Kellogg Boulevard. It is their position that without this additional Public Viewing Area, also referred to by them as “designated public assembly areas”, their Constitutional Rights to freedom of speech, petition and assembly will be unreasonably denied. They reject the presently-designated Public Viewing Area as inadequate in both size and location.

The area that the Plaintiffs seek to have designated as a Public Viewing Area/designated public assembly area extends from the middle of the intersection of Kellogg Boulevard and West 7th Street to Chestnut Street. It cannot be disputed that the intersection of Kellogg Boulevard and West 7th Street provides an outstanding and unobstructed view of the Xcel Center. As anyone who has ever gone to a hockey game or concert at the Xcel Center knows, the presently-approved Public Viewing Area also provides an exceptional and unobstructed view of the Xcel Center. Both areas will provide protestors with visual and verbal access to the delegates and dignitaries attending the Convention. The Kellogg Boulevard and West 7th Street location provides the best view. However, it also presents more significant logistical and security issues.

The Plaintiffs were partially correct in distinguishing this lawsuit from the federal lawsuit. The federal lawsuit that was heard before Federal Judge Ericksen only dealt with a parade route. The parade involved in Federal Judge Ericksen’s lawsuit will occur on the first day of the Convention. This lawsuit deals with the allocation of public roads, public sidewalks, and public spaces visually and/or physically adjacent to the Xcel Center for every day of the convention. The present Public Viewing Area is visually available

from the semicircular glass area of the Xcel Center's interior where delegates will enter and leave the actual arena. It will also be close to a security screening area which 90 percent of the delegates will go through. A significant part of the presently-designated Public Viewing Area is visible from the sidewalks in front of the actual entrances of the Xcel Center. The sidewalks from the middle of Kellogg Boulevard West to Chestnut Street will be open to pedestrian traffic including protestors. The only vehicle traffic allowed in that area will be for buses transporting delegates and emergency vehicles.

West 7th Street from Kellogg Boulevard to Chestnut Street is broad at the immediate intersection. It narrows significantly as it approaches Chestnut Street. The photograph received into evidence as Exhibit 1 makes it clearer to the Court that making that area a designated public assembly area would be unreasonable especially close to the start of the Convention. The logistics and security issues involved in safely transporting and processing the approximately 45,000 persons who will attend the RNC on a daily basis is daunting. This 45,000 number includes thousands of delegates and alternates, approximately 15,000 members of the media, and numerous high-level government officials including the 2008 Presidential and Vice-Presidential Candidates of the Republican party, the present President and the present Vice-President of the United States of America, Cabinet officials, members of Congress, Governors, and Senators.

The streets around the Xcel Center, including Kellogg Boulevard, West 7th Street, Old 6th Street, and 5th Street, are essential for access not only to the Xcel Center but to three of the major hospitals in Saint Paul. (United Hospital, Children's Hospital, and St. Joseph's Hospital.) Granting the Plaintiffs' request to designate an area at West 7th Street and Kellogg Boulevard for public protest groups would cripple public and delegate

access to the restaurants and businesses on West 7th Street. It would make it impossible to transport delegates to and from the Xcel Center in a reasonable manner. It would also provide unreasonable opportunities for the numerous protest groups who have publically expressed their desire to go beyond the bounds of the legitimate exercise of their Constitutional rights. It would be irresponsible for the police department or the secret service to ignore both the number and the type of public planning statements made by certain protest groups referred to in Commander Bostrom's affidavit, Mr. Kelly's affidavit, and the affidavit of United States Secret Service National Convention Coordinator, John Koleno. No one knows for sure if these groups will actually take these steps in an attempt to "shut down the Conventions" in both Denver and Saint Paul. Ignoring these threats to the public, the delegates, and to our present-elected officials who will be attending the Convention, and denigrating them as merely "vague" or "speculative" is not acceptable for those responsible for protecting persons and property.

Plaintiffs' free speech rights will have some restrictions during this Convention. It is unfortunate that the area around the Xcel Center will not allow for more areas where groups can protest. Given the unique geography of the City of Saint Paul, the number of people attending the Convention, the space that the national and international media needs in order to assure that freedom of the press is honored, the space cannot be expanded. There will be times when the present Public Viewing Area will be crowded and the Plaintiffs in this lawsuit, as well as others, will be frustrated. There are so many individuals and groups that want to be heard on public issues that that would be inevitable, even if a larger area were possible. Is the present area ideal? No. Is it constitutionally adequate in light of all of the relevant circumstances? Yes. The reasons

for closing city streets adjacent to the Xcel Center are both security-based and logistic-based. The Plaintiffs have presented nothing that rebuts the City's position that these restrictions are content-neutral. Judge Krieger stated in the Colorado case of *American Civil Liberties Union of Colorado, et al., v. City and County of Denver, et al.* issued on August 6th of this year that:

At its heart, the task of devising a security scheme is inherently a predictive process, requiring planners to make assumptions as to what threats there are, how likely they are to occur, and what harm might result if they do. ... As with any prediction, one can always find fault with its accuracy or second-guess the underlying assumptions. A rule that would require the government to shape its security plans around only the most predictable threats would needlessly hobble the ability to anticipate and prevent the unusual and creative threat. ... Simply put, some degree of deference must be afforded to the government's judgment as the most effective means for achieving its security goals. *Bl(a)ck Tea*, 378 F.3d at 13; *Citizens for Peas In Space*, 477 F.3d at 1221.

In addition to the presently designated Public Viewing Area, the Plaintiffs in these two lawsuits will have viable alternative means to communicate their messages to the delegates and to the broader public. The location is adjacent to two of the three primary spaces established for local, national, and international media outlets. There will be 15,000 media representations looking for stories. They will be able to participate in more than one parade, including the September 1st parade which will, at its closest point, pass within 84 feet of one of the main entrances to the arena. The PVA will be open from seven a.m. to eleven p.m. every day of the Convention. Many delegate's buses will go by this area. Other public spaces in the City have been made available for the protestors, including the State Capital mall. Plaintiffs were also able to participate in the lottery regarding the one-hour periods on a stage in the middle of the Public Viewing Area.

In her recent order, Federal Judge Ericksen favorably compared the presently-approved Public Viewing Area to areas employed during other recent political

conventions, including the 2004 Boston Convention and the 2000 Democratic National Convention. After reading Federal Judge Krieger's detailed order regarding this year's Democratic Convention in Denver, the Saint Paul space compares favorably to the space provided in Denver. It allows better access than Denver.

The Plaintiffs are understandably frustrated that they will not be able to get closer to the delegates and media attending the Convention. Given the specific transportation and public safety challenges involved in transporting delegates and dignitaries to and from the Xcel Center, the safety concerns at the Xcel Center itself, the location of the businesses, government facilities, hospitals, and cultural facilities in Downtown Saint Paul relative to the Xcel Center, and the significant size of the present Public Viewing Area, this Court has denied the Plaintiffs' motion. The decision regarding the size and location of the present Public Viewing Area was content-neutral, is narrowly tailored to serve significant government interests, and leaves open ample alternatives for communication of the Plaintiffs' messages.

KG

A handwritten signature in black ink, appearing to be the initials 'KG' with a stylized flourish.