

8)

STATE OF MINNESOTA

FILED  
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

SEP 02 2008

SECOND JUDICIAL DISTRICT

By JB Deputy

True Blue Minnesota, a nonprofit corporation,  
Martha A. Ballou, President, and Andrew M.  
Hine, Vice President,

Plaintiffs,

Chief Judge Kathleen Gearin

vs.

File No. 62-CV-08-8748

**ORDER**

The Capitol Area Architectural and Planning  
Board, and Carol Molnau, Lieutenant Governor  
Of the State of Minnesota, in her official capacity  
as Chair of the Capital Area Architectural and  
Planning Board,

Defendant

The above-entitled matter came on for hearing before the undersigned on August 29,  
2008, pursuant to a motion for the temporary injunction filed by the Plaintiffs.

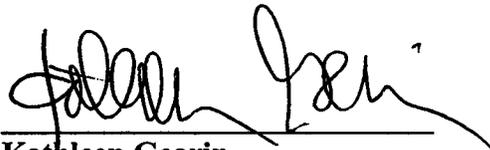
Jay Y. Benanav and Jane L. Prince appeared on behalf of the Plaintiffs. Assistant  
Attorney General Nathan J. Hartshorn and Deputy Attorney General Christie B. Eller represented  
the Defendants.

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

1. The motion for a temporary injunction is taken under advisement in order to allow  
both sides to submit a transcript of the CAAPB hearing to the Court.
2. The Plaintiff is ordered to submit a transcript to the Court and to the Defendants by  
9:00 a. m. on Tuesday morning, September 2, 2008.

3. The Defendants may submit their own transcript and/or any corrections they believe are appropriate to Plaintiffs' transcript to the Court by 12:00 noon on September 2, 2008.
4. The Capitol Area Architectural and Planning Board and other Defendants are temporarily stayed from enforcing their decision not to grant a variance to True Blue Minnesota pending further order of the Court. This order was effective immediately as of the time of the hearing on August 29, 2008.

**BY THE COURT:**



**Kathleen Gearin**  
**Chief Judge of District Court**

**Dated this 2<sup>nd</sup> day of September, 2008**

#### **MEMORANDUM**

Plaintiffs are a nonprofit group set up to place a temporary “jumbotron” video sign attached to a semi-trailer truck to play video and still images throughout the four days of the Republican National Convention in St. Paul, Minnesota. The intent is to have this jumbotron displayed in Triangle Park from September 1 through September 4, 2008. Triangle Park is a city-owned park that is located within the Capitol Area Architectural and Planning Board jurisdiction. Plaintiffs sought and obtained permission from the City of St. Paul to place this item in

Triangle Park. They went through the regular processes for the City to make sure that this jumbotron could be legally displayed. They have posted a bond with the City regarding any damage that happens to the property. The City of St. Paul has no objection to the jumbotron being in Triangle Park. The city is not a party to this lawsuit. However, it is clear from the submissions of both sides that the City is not concerned about any safety issues or logistical issues regarding the sign's location, size, et cetera.

Plaintiffs were notified by the City in July of 2008 that they also had to contact CAAPB regarding placing the jumbotron within the Capitol area. Plaintiffs did that and a special meeting was held on Wednesday, August 27, 2008 by the Board. It is the Board's belief that the placement of this device would require a variance by them from the rules regarding zoning and design for the Minnesota State Capitol area. At the special meeting the Board voted 6/5 to deny the variance.

The Plaintiffs claim that this denial of the variance violates their constitutional rights to freedom of speech because the decision was made for political reason regarding the anti-administration, anti-war, and anti-establishment content that was going to be presented on the jumbotron. The Court cannot make a final determination on that issue at this time. It believes that a transcript of the hearing, if available from the tape, would be important before making the final ruling. There is also an issue of whether an appeal from a variance decision can go to District Court.

Clearly, a normal denial of a variance should go directly to the Court of Appeals. In this case, the Plaintiffs argue that the District Court has jurisdiction because of their perception that the decision was made for political reasons and therefore constitutes an immediate denial of their constitutional rights to freedom of speech.

The Court is concerned about the Plaintiffs' argument that the decision was made, at least in part, because of the content that was going to be displayed upon the jumbotron. It is aware from the submissions that the City had no objection to it and that the principle planner for the Board, Paul Mandel, recommended approval of the variance. The affidavit of Ms. Prince submitted by the Plaintiffs states that "Mr. Mandel stated that under his analysis and interpretation of the code, True Blue Minnesota's application for the variance met the Board's rules and requirements. Mr. Mandel recommended approval of the variance, stating that it was in line with other variances granted by the Board, including another variance granted in June 2008 to another group requesting a sign variance in conjunction with the Republican National Convention."

The following statement by Ms. Prince in her sworn affidavit especially concerns the Court: "Rep Lanning stated the he was concerned about the subject matter of the activity that was the subject of the variance." The vote was made on party lines.

All of those circumstances have led the Court to temporarily stay the Board from enforcing their decision to deny the variance. Freedom of

speech is one of the most important tenants of our constitution. The submissions of the Plaintiffs lead the Court to believe that their assertions are not frivolous and deserving of further consideration by the court..

9/2/08

K.G.

