



IWD Planning Committee & the Coalition for Free Speech V. City of San Antonio

Background

Street marches are the most important form of democratic protest practiced throughout the world. Most recently, on February 15, 2003, over 12 million people around the world marched in the streets to protest the planned U.S. invasion of Iraq. Over 2,000 protestors were in downtown San Antonio – on the sidewalks. Organizers wanted to march in the streets, but they were told by the San Antonio Police Department that a street march would cost several thousand dollars.

In fact, the 2003 San Antonio Code of Ordinances said that street marches “of a political nature” were not to be charged for police or traffic control costs, but we now know that the SAPD routinely told activists that they must pay thousands of dollars to march. For those with friends in City Hall or in the SAPD, a few phone calls would get these costs waived, but for countless others, the costs were prohibitive and street march plans were cancelled.

So we walked on the sidewalks in February 2003, and the conditions were dangerous. The sidewalks were too small to hold the large crowd; a few people were pushed into the streets, where pro-war hecklers yelled and raised fists from their cars. Frustrated pedestrians pushed through the crowd to catch a bus or enter a store, shoving marchers as they moved past. People in wheelchairs struggled to negotiate blocked sidewalks and curbs and elderly marchers stumbled over cracks and holes in the cement.

On April 10, 2006, millions of people marched in over 140 U.S. cities to urge Congress to pass just and humane immigration reform. Over 40,000 of those activists were in San Antonio, marching down Houston Street from the Plaza de Zacate to Travis Park. After that march, the City wanted its organizers, who had obtained a parade permit, to pay over \$70,000 for police and traffic control. Councilmember Patti Radle intervened and the idea was dropped.

Less than a month later, on May 1, over 18,000 San Antonians marched for immigrant rights as part of the National Day Without Immigrants. This march did not have a permit. Officer Jenkins, who handles SAPD parade permits, had refused to issue a permit unless the organizers agreed to pay tens of thousands of dollars. What about the marchers’ rights to freedom of speech and assembly? “You can march on the sidewalk,” Officer Jenkins told them.

As the 6 pm start time approached on May 1, the huge crowd

gathered in the Plaza de Zacate overflowed onto the streets. People surged towards Houston Street and began to march. Organizers’ futile efforts to move marchers to the sidewalks were soon abandoned. The people united. Fortunately, the City made no arrests and imposed no charges.

But the City did form a committee. That committee, with members drawn from city staff, the SAPD, and the city attorney’s office, prepared a new Parade Ordinance repealing the cost exemption for marches with a political focus and presented it for City Council approval in March, 2007. Alarmed, Councilmembers Patti Radle and Elena Guajardo convinced the City Council to table the proposal until staff received wider input. Community representatives tried for months to convince staff and SAPD representatives not to impose the prohibitive costs. In May, both Radle and Guajardo were replaced on the City Council and on November 29, 2007 the City Council enacted the New Parade Ordinance, with strong negative votes by Councilmembers Lourdes Galvan and Mary Alice Cisneros. The only concession to free speech and assembly rights in the Ordinance is a provision

for the City to absorb the first \$3,000 in costs, but organizers will have to pay for all additional costs, which typically are at least \$3,000 - \$10,000 and often much more. With this Ordinance, San Antonio has become the first major city in the nation to impose such prohibitive costs on street marches.

The Lawsuit

After the vote, members of the International Woman’s Day Planning Committee and the Coalition for Free Speech marched from Council Chambers to the Federal Courthouse and filed a lawsuit challenging the new Parade

Ordinance as violating the First Amendment rights of free speech and assembly and the Fourteenth Amendment right to equal protection of the laws. We also asked for a preliminary injunction, to stop the City from charging the high fees for street marches until the case went to trial and a final decision was reached.

The case was assigned to Judge Xavier Rodriguez and he held a hearing on our request for a preliminary injunction. On February 21, the Judge ordered the injunction and issued a 37 page explanation of his decision.

This is where things get complicated. Even though street marches have long been protected by the First Amendment, recent decisions have opened cracks in these protections. Most



A street teatro at the U.S. Courthouse gave the crowd and reporters a picture of the inequities that the March Ordinance of San Antonio promotes.

importantly for us, some courts have resurrected an off-hand, long-ignored, comment made by the U.S. Supreme Court in the 1941 case of *Cox v. New Hampshire*. That case involved the misdemeanor prosecution of sixty-five Jehovah's Witnesses who marched without a permit, carrying signs saying "Religion is a Snare and a Racket," "Serve God and Christ the King," and "Fascism or Freedom." The Supreme Court held that the state could require a permit without violating the First Amendment and commented that the permit fee of \$1 to \$300 (with small marches being charged a nominal fee and large circus parades being charged up to \$300) probably would be permissible, so long as the fee was "not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed."

Over the past twenty years or so, a few smaller cities and towns have required street march organizers to pay some amount to offset police and traffic control costs. Courts have disagreed on whether these fees, most of which were under \$1,000, violated the First Amendment. The only recent Supreme Court case held that such fees were unconstitutional if the dollar amount was set by police officials without clear guidelines. We believe that the costs contemplated by the San Antonio Parade Ordinance, ranging from several thousand to several tens of thousands, are significantly different from those previously approved by lower courts. These fees are unreasonable and operate as a complete bar on important rights to freedom of speech and assembly.

The law is also conflicted as to whether a City may waive fees for favored marches and parades while requiring others to pay thousands of dollars. One line of cases holds that it is unconstitutional for the government to impose a burden on some people or groups merely because of their political message or viewpoints. This is the doctrine of viewpoint neutrality that Judge Orlando Garcia found violated by the City in its 1997 defunding of the Esperanza. Another line of cases holds that the government may grant special subsidies to some people or groups in order to promote a message that the government endorses.

In his decision granting a preliminary injunction, Judge Rodriguez found that the Parade Ordinance probably was unconstitutional in its failure to define clear cost guidelines. He also indicated that the City probably did not violate the Constitution by waiving the fees for the three City-sponsored events mentioned in the Parade Ordinance: the MLK March, the Diez y Seis Parade, and the Veterans Day Parade, but the Judge did not consider whether further waivers would be permissible. Since then, we have received City documents showing that these three waivers are just the tip of the iceberg. In 2007, for example, 81 Parade Permits were issued and for 67 of these, police costs and/or traffic device costs were waived. Only 12 events were targeted for full payment. San Antonio is not carefully choosing to endorse a few messages; in fact, the City is generally allowing free access to the streets and is targeting a few organizations and events with onerous costs.

On March 13, the City Council amended the Parade Ordinance, hoping to correct the constitutional violations discussed by Judge Rodriguez. The amendments list seven factors for the SAPD to consider in setting the fees (the march route, the number of participants etc.) and direct the Chief of Police to create a Standard Operating Procedure implementing these factors.

At that point, the lawsuit stalled, waiting for the Chief of Police to issue the Standard Operating Procedure so that we could all see what the fee-setting details would be. Months passed. Finally, Judge Rodriguez set the case for a Status Conference on June 24. On June 23, the Standard Operating Procedure was issued.



Buena gente at the status conference on June 24, 2008 at the Federal Courthouse in S. A.

We will ask Judge Rodriguez to continue the injunction, arguing that the high fees constitute an insurmountable bar to freedom of speech and assembly, that the frequent waivers constitute unconstitutional viewpoint discrimination, and that the Parade Ordinance is unconstitutionally vague in its definition of "First Amendment Processions" and "Non-First Amendment Processions."

In court the next day, City Attorney Deborah Klein offered a "computer glitch" as the explanation for the delay.

So now things are speeding up. Judge Rodriguez reaffirmed the trial date of November 17, 2008. On June 27, the City filed a Motion asking the Court to end the injunction on the ground that the amendments and the Standard Operating Procedure correct all unconstitutional aspects of the Parade Ordinance. We will ask Judge Rodriguez to continue the injunction, arguing that the high fees constitute an insurmountable bar to freedom of speech and assembly, that the frequent waivers constitute unconstitutional viewpoint discrimination, and that the Parade Ordinance is unconstitutionally vague in its definition of "First Amendment Processions" and "Non-First Amendment Processions."

This is an important struggle. We must preserve our right to march in the streets! We must protect the public right to open political debate! Join us! Come to Free Speech Coalition Meetings the 2nd Tuesday of every month at the Esperanza! Write letters to the editor or Op-Ed pieces! Contribute money to the Coalition for litigation expenses! Call 210.228.0201 to get involved! The case will go to trial on November 17, 2008! For more go to: www.esperanzacenter.org/freespeech □

NEEDED: Court reporter willing to help the Free Speech Coalition. Call 639-9790.