

Wednesday, June 15, 2016

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

Mayor Jim Kenney
City of Philadelphia
City Hall, Office 215
Philadelphia, PA 19107

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

BY FAX TO (215) 686-2180

RE: Accommodating Protest During the DNC

Western Region Office
247 Fort Pitt Blvd.
Pittsburgh, PA 15222
412-681-7736 T
412-681-8707 F

Dear Mayor Kenney:

We are deeply troubled by recent statements made by your attorneys that seem to be setting the City up for conflict with protesters during the Democratic National Convention.

As you may know, we have been meeting regularly with City representatives who are involved in planning around the DNC.¹ We are concerned that the City Law Department seems to have walked back several statements made earlier about how the City would accommodate protest during the DNC. The new positions articulated by the Law Department raise serious First Amendment issues.² Other questions regarding protest during the DNC have yet to be answered by the City. We write to ask you to clarify the City's position on the important issues identified below and work with us to ensure that the thousands of protesters who will be in Philadelphia during the DNC will know what the applicable rules are and how they should expect to be treated.

- **Crackdown on protesters without permits.** We asked the City Law Department to confirm in writing what we had been told in meetings with City officials regarding the City's intent not to interfere with the right to protest any

¹ This includes staff in the Managing Director's Office, Office of Special Events, the Philadelphia Police Department (including Homeland Security, Civil Affairs, Tactical, and Traffic), Office of Emergency Management, Streets Department, Parks & Recreation, SEPTA Operations, and the City Law Department, as well as the Secret Service. The City Law Department recently asked that we stop communicating directly with City agencies and instead direct all inquiries through it.

² The First Amendment limits the City's authority to restrict when, where and how protesters may use public areas. Political marches and demonstrations in public spaces are quintessential First Amendment activities entitled to maximum constitutional protection. *Boos v. Barry*, 485 U.S. 312, 318 (1988). When expressive activities, like marches, rallies, leafletting, picketing and demonstrations, take place in "quintessential public fora," such as streets, sidewalks, squares and parks, the "government's ability to permissibly restrict expressive conduct is extremely limited . . ." *United States v. Grace*, 461 U.S. 171,177 (1983).

more than necessary to protect public safety and local business. Specifically, we asked the City to confirm that—consistent with longstanding practice—Philadelphia police will not declare any march or protest “unlawful” and order protesters to disperse solely because of a lack of a permit, and that Philadelphia police would only halt, try to redirect, or order dispersal of groups that create an unmanageable obstruction of traffic, obstruct access to buildings, or otherwise engage in illegal conduct. The City Law Department was unwilling to commit to this position, and instead stated that the City’s position is that “permits are required for demonstrations, protests and rallies (this ensures that appropriate resources can be made available so that those exercising their first amendment rights can do so safely).” What is the City’s plan with respect to protesters without a permit who do not substantially obstruct vehicular or pedestrian passage?


- **Marches down Broad St.** In addition, the Law Department recently told us that “the City does not intend to issue any permits for marches down Broad Street” during the DNC. This is in stark contrast to our earlier conversations about Broad St., in which City officials led us to expect temporary lane closures and barriers on Broad St. south of City Hall, but not that Broad St.—which has traditionally been one of the most used march routes for Philadelphia demonstrations—would be completely off-limits to protesters. Please clarify whether the City will be issuing any permits for marches and demonstrations on Broad Street and, if so, under what conditions and constraints.
- **“Rush hour” marches in Center City.** The Law Department also recently told us that “[w]ith respect the rest of Center City [other than Broad St.], the City does not intend to issue any permits for marches during rush hour in Center City. Rush hour is considered 7 AM – 9 AM and 3 PM – 6 PM, Monday through Friday.” The City’s restrictions on protest permits in Center City are particularly concerning when combined with the City’s unwillingness to state publicly that it will not seek to punish protesters merely for protesting without a permit. Please clarify whether the City will issue any permits for demonstrations within Center City during rush hour, and if so, under what conditions and constraints.
- **Removing protesters from FDR Park at night.** In meetings, Police Department officials have told us that they will not expend resources to clear FDR Park at night. We asked the City to confirm in writing its position that police will not cite or arrest protesters who remain in FDR Park after 1 AM (unless they otherwise engage in illegal conduct), and the Law Department declined, responding that the City’s position was, rather, that “all City laws, ordinances, and regulations in place today will remain effective during the convention.” Will the City allow people to remain in FDR Park overnight during the Convention?


- **Pennsylvania State Police and other non-City law enforcement.** The Police Department has stated in meetings that the Pennsylvania State Police will only be present in Philadelphia during the DNC if they are called in by the Philadelphia Police Department and that, if that happens, the PSP will be operating under the PPD command structure. However, we have also been told that PSP will not be bound by PPD directives. According to media reports, Philadelphia plans to spend \$5 million of a federal grant for deployment of non-PPD law enforcement personnel, including Pennsylvania State Police. Given such a high anticipated level of non-PPD law enforcement, it is vital that the public understands to what extent the law enforcement officers providing DNC-related security in Philadelphia will be under the City's control and bound by the City's policies, such as the PPD policy against infiltration of protestor groups, or PPD policies restricting officers' interference with civilians' attempts to record or photograph the police. Will law enforcement personnel from non-Philadelphia agencies, including but not limited to the PSP, be subject to Philadelphia Police directives and policies?
- **Enclosure around FDR Park.** We have been told in private that any security barriers erected around FDR Park will not be set any farther back from the street than the sidewalk, and that the fencing used will not be so opaque as to obscure protesters' view of the Wells Fargo Center (and the DNC delegates' view of the protesters). Will the City commit to ensuring that protesters are visible from the Wells Fargo Center and to not using opaque fencing around and near the Wells Fargo Center?
- **Camping.** As you no doubt are aware, there will be more visitors to Philadelphia during the DNC than there are available hotel rooms. We have asked whether the City will suspend its ordinance prohibiting camping so that there is some designated area of the City where protesters may spend the night without risking arrest. The Law Department's latest statement that "all City laws, ordinances, and regulations in place today will remain effective during the convention" seems to suggest that the City will not allow camping anywhere, but a clearer answer is needed. Will the City allow guests to camp anywhere within City limits and, if so, where?

The ACLU of Pennsylvania, the residents of Philadelphia, and protesters planning to visit the City during the Convention would appreciate answers to the foregoing questions. If we do not receive a timely response, we will assume the information provided most recently to us by the Law Department constitutes the City's policy on protesters during the DNC.

The Convention will be an important opportunity for you and City officials to showcase our beautiful city. We ask for your leadership in ensuring that Philadelphia lives up to its reputation as the birthplace of liberty in America. At a time when our city will be draped in red, white, and blue and on display for the world, we urge you to keep in mind that there is perhaps nothing more patriotic and American than dissent. We hope you will work with us to ensure that as many protesters as possible can have their voices heard in Philadelphia during the DNC.

Respectfully,


Reginald T. Shuford
Executive Director


Mary Catherine Roper
Deputy Legal Director

CC: Sozi Tulante, City Solicitor
BY EMAIL TO: Sozi.Tulante@phila.gov