

PARTIES

2. Plaintiff Silvie Pomicter is an adult individual with an address of P.O. Box 312, Chinchilla, PA 18410. Ms. Pomicter has been an animal rights activist for many years, and regularly protests outside businesses and venues that she believes engage in or support cruelty to animals.

3. Plaintiff Last Chance for Animals (“LCA”) is a non-profit organization dedicated to eliminating animal exploitation through education, investigations, legislation, and media attention. LCA and its members believe that animals are highly sentient creatures who exist for their own reasons independent of their service to humans; they should not be made to suffer for the latter. LCA therefore opposes the use of animals in food and clothing production, scientific experimentation, and entertainment. Instead, it promotes a cruelty-free lifestyle and the ascription of rights to non-human beings. LCA is organized in the State of California with an address of 8033 Sunset Blvd #835, Los Angeles, CA 90046.

4. Defendant Luzerne County Convention Center Authority (the “Authority”) is an authority organized pursuant to the Municipal Authorities Act of Pennsylvania with an address of 255 Highland Park Boulevard, Wilkes-Barre, PA 18702. The Authority owns the Arena, Casey Plaza, and the surrounding parking lots.

5. Defendant SMG is a Pennsylvania general partnership with an address of 300 Conshohocken State Rd., Suite 450, West Conshohocken, PA 19428. SMG performs management services and systems to operate, manage, and promote the Arena as agent for the Authority.

JURISDICTION AND VENUE

6. This action seeks to vindicate Plaintiffs' rights protected by the First and Fourteenth Amendment to the United States Constitution and is brought under 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

7. This Court also has jurisdiction over the claim brought under Article I of the Pennsylvania Constitution pursuant to 28 U.S.C. § 1367.

8. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

9. Venue is appropriate in this district under 28 U.S.C. § 1391(b) because the Arena, where a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred, is located within this district.

FACTS

10. The Arena and Casey Plaza are located in the Township of Wilkes-Barre, Pennsylvania.

11. The Arena was originally named the Northeastern Pennsylvania Civic Arena and Convention Center, and is a multi-purpose arena that seats approximately 8,500 people.

12. In addition to the Circus, the Arena is the home to the Wilkes-Barre/Scranton Penguins of the American Hockey League. Other events at the Arena include music concerts, ice-skating shows, the Harlem Globetrotters, and graduation ceremonies for local colleges.

13. Outside the Arena building are expansive sidewalks, grass areas, and a paved open space area for pedestrians (collectively, "Casey Plaza").

14. Upon information and belief, the paved open space area, sidewalks, and grass areas in Casey Plaza have been held open for public use. Members of the public are permitted to enter these areas even if they do not have tickets to enter the Arena building itself to watch a performance or event.

15. The Defendants' written "Protest Policies" state "[a]ll persons are welcome to express their views at the Mohegan Sun Arena at Casey Plaza."

16. The "Protest Policies" and the Defendants' unwritten practices impose restrictions on expressive activity at the Arena, including requiring that any individuals who want to protest, hand out leaflets, or engage in other expressive activity do so from within a small "designated area" surrounded by barricades in the parking lot.

17. In addition, at past Circus performances, additional barricades have been arranged around the confined protesters to direct foot traffic away from the protesters and toward the doors of the Arena.

18. Because protesters are confined to the barricaded designated area, they are prevented from approaching passersby in Casey Plaza and/or visitors to the Arena to engage in conversation or hand out leaflets.

19. The Protest Policies also state that “[a]ny visual panels or banners considered to be offensive by the facility, in any manner, may not be shown and we will ask that they be removed,” that “[a]ny promotional verbiage suggesting vulgarity or profanity is not permitted,” and that “artificial voice amplification” is not permitted.

20. The Protest Policies make clear that non-compliance with the policies “may result in eviction from the property or greater.”

21. Upon information and belief, prior protesting, leafletting, and expressive activity in Casey Plaza has not caused a safety or security problem or impeded the access of visitors to the Arena building.

22. Plaintiffs Silvie Pomicter and LCA are opposed to the use of animals by the Ringling Bros. and Barnum & Bailey Circus (the “Circus”).

23. The Circus will be performing several shows at the Arena from April 28 to May 1, 2016.

24. Ms. Pomicter and LCA would like to engage in protesting, leafletting, and other forms of expressive activity in Casey Plaza when the Circus comes to the Arena, and at future events and performances.

25. Plaintiffs hope to hand out leaflets and hold signs and/or banners. They would speak with willing patrons on their way to the entrance to the Arena building, but would not congregate by the doors or in any way obstruct the flow of pedestrians or interfere with the sale of merchandise.

26. The Defendants' Protest Policies and practices, however, will severely and unlawfully restrict Plaintiffs' ability to engage in this expressive activity.

27. The Authority and SMG do not have legitimate reasons for requiring individuals to protest and leaflet from within the barricaded designated area in the parking lot only, for prohibiting "offensive" visual panels and banners, for prohibiting "promotional verbiage suggesting vulgarity or profanity," or for prohibiting "artificial voice amplification"—nor does any of these restrictions on expression further a compelling government interest.

28. Plaintiffs ask this Court to declare that the Defendants' written Protest Policies and unwritten practices violate the First and Fourteenth Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution, and to enjoin the Authority and SMG from prohibiting, during Circus performances and future events at the Arena, protesting, leafletting, and other

expressive activity in Casey Plaza that does not obstruct visitors from entering the Arena building or otherwise interfere with the events being conducted inside the Arena building.

COUNT I

UNCONSTITUTIONAL INFRINGEMENT ON FREEDOM OF SPEECH: VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 7 OF ARTICLE I OF THE PENNSYLVANIA CONSTITUTION

29. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth herein.

30. Plaintiffs would like to protest, leaflet, and engage in other expressive activity in the paved open space area, sidewalks, and grass areas in Casey Plaza outside the Arena building in the future, including when the Circus comes to the Arena.

31. Plaintiffs intend for their expressive activity to not obstruct visitors from entering the Arena building or otherwise interfere with the events being conducted inside the Arena building.

32. If the Authority and SMG are allowed to enforce their Protest Policies and practices, Plaintiffs' rights to free speech will be violated.

33. The Authority and SMG's Protest Policies and practices of confining individuals who wish to engage in protesting, distribution of leaflets, and other expressive activity to a barricaded "designated area" in the parking lot are

unreasonable, in violation of the First and Fourteenth Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution.

34. The Protest Policies' prohibition on "[a]ny visual panels or banners considered to be offensive by the facility, in any manner" is a content-based restriction that is not narrowly tailored to promote a compelling government interest, in violation of the First and Fourteenth Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution. This prohibition is also unconstitutionally vague, in violation of the First and Fourteenth Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution.

35. The Protest Policies' prohibition on "[a]ny promotional verbiage suggesting vulgarity or profanity" is a content-based restriction that is not narrowly tailored to promote a compelling government interest, in violation of the First and Fourteenth Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution. This prohibition is also unconstitutionally vague, in violation of the First and Fourteenth Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution.

36. The Protest Policies' prohibition on the use of "artificial voice amplification" is unreasonable, in violation of the First and Fourteenth

Amendments to the United States Constitution and Section 7 of Article I of the Pennsylvania Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Silvie Pomicter and Last Chance for Animals ask that this Court:

- A. Enter judgment in their favor, and against Defendants;
- B. Declare that the Protest Policies and Defendants’ practices violate the First and Fourteenth Amendments to the U. S. Constitution and Section 7 of Article I of the Pennsylvania Constitution;
- C. Issue a permanent injunctive barring Defendants from: (1) prohibiting individuals from engaging in protesting, leafletting, and other expressive activity on the paved open space area, sidewalks, and grass areas in Casey Plaza that does not obstruct visitors from entering the Arena building or otherwise interfere with the events being conducted inside the Arena building; (2) prohibiting visual panels, banners, or other promotional verbiage on the basis that such materials are “offensive”; and (3) prohibiting individuals from using artificial voice amplification.
- E. Award Plaintiffs attorneys’ fees, costs, and pre- and post-judgment interest; and
- F. Grant such other relief as the Court deems just and appropriate.

Dated: April 15, 2016

Respectfully submitted,



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Animals*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SILVIE POMICTER

and

LAST CHANCE FOR ANIMALS,

Plaintiffs,

v.

LUZERNE COUNTY CONVENTION
CENTER AUTHORITY

and

SMG,

Defendants.

CIVIL ACTION

No. _____

VERIFICATION

I swear on penalty of perjury that the foregoing statements of fact are true and correct to the best of my knowledge.

Silvie Pomicter, Plaintiff

Date

On behalf of Last Chance for Animals, Plaintiff

Cindy Beal
CFO

4.12.16
Date

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CIVIL ACTION

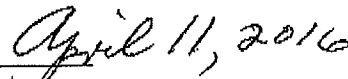
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VERIFICATION

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Silvie Pomicter, Plaintiff



Date

On behalf of Last Chance for Animals, Plaintiff

Date