

**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.

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CIVIL ACTION

No. _____

**MOTION FOR PRELIMINARY INJUNCTION
OF PLAINTIFFS SILVIE POMICTER AND
LAST CHANCE FOR ANIMALS**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Silvie Pomicter and Last Chance for Animals (“LCA” and, collectively with Ms. Pomicter, “Plaintiffs”) hereby move this Court for a preliminary injunction that bars defendants Luzerne County Convention Center Authority (“Authority”) and SMG (“SMG”) from prohibiting individuals from engaging in protesting, leafletting, and other expressive activity on the paved open space areas, sidewalks, and grass areas at Casey Plaza that does not obstruct visitors from entering the Mohegan Sun Arena building or otherwise interfere with the events being conducted inside the Mohegan Sun Arena building.

In support of their motion, Plaintiffs aver:

1. The Authority owns the Mohegan Sun Arena (the “Arena”) at Casey Plaza, and the surrounding grounds.
2. SMG manages the Arena as agent for the Authority.
3. Outside the Arena building are expansive sidewalks, grass areas, and a paved open space area for pedestrians (collectively, “Casey Plaza”).
4. Patrons attending events at the Arena arrive primarily by car: they turn into an access road from Highland Park Boulevard, park in one of the lots outside the Arena, and then proceed on foot to one of two entrance points for the Arena. These entrances are called the “East Gate” and the “West Gate” and are on opposite sides of the face of the Arena.
5. A broad paved apron sweeps across the entire face of the Arena, with particularly large areas in front of each gate.
6. Upon information and belief, the paved open space area, sidewalks, and grass areas in Casey Plaza have been held open for public use. There is no fence around Casey Plaza. 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.
7. The Defendants’ written “Protest Policies” and the Defendants’ unwritten practices impose restrictions on expressive activity outside 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.”

8. Plaintiffs Silvie Pomicter and LCA are opposed to the use of animals by the Ringling Bros. and Barnum & Bailey Circus (the “Circus”). They want to protest outside upcoming Circus performances at the Arena.

9. During past Circus performances at the Arena, the “designated area” for protest has been a small fenced pen formed with metal barricades at the edge of the parking blacktop on the eastern side of Casey Plaza. Protesters standing inside the pen are not visible to patrons approaching the West Gate, and most patrons approaching the East Gate do not pass by the protest pen unless they change direction to do so. Because protesters standing in the protest pen are not allowed to use bullhorns or other amplification, many patrons never notice that they are present.

10. At some 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.

11. 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.

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

13. 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.

14. 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.

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

16. On March 31, 2016, counsel for Plaintiffs faxed and emailed a letter to Defendants requesting that Defendants suspend their Protest Policies and allow Plaintiffs to protest at the upcoming circus performances without being confined behind barricades.

17. Counsel for the parties negotiated in good faith on April 6 and April 8, 2016. On April 11, 2016, counsel for Plaintiffs were informed that Plaintiffs' demand would be discussed by the Board of the Authority at its regularly scheduled meeting at noon on Wednesday, April 13, 2016, after which Plaintiffs would receive a final answer to their request.

18. On Wednesday, April 13, 2016, counsel for Defendants informed Plaintiffs' counsel that the Authority would refuse to allow Plaintiffs to protest without confinement.

19. Plaintiffs initiated this action by complaint two days later, on Friday, April 15, 2016.

20. 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.

For these reasons and those set forth in Plaintiffs' Memorandum of Law in support of this Motion, filed contemporaneously herewith, Plaintiffs respectfully request that this Court schedule a prompt hearing and thereafter enjoin Defendants from enforcing the Arena Protest Policies and their unwritten practices.

Respectfully submitted,

SAUL EWING LLP

Dated: April 15, 2016

/s/ Alexander R. Bilus

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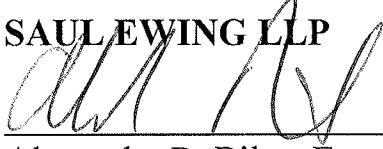
CERTIFICATE OF SERVICE

I, Alexander R. Bilus, hereby certifies that on this date the foregoing Motion for Preliminary Injunction of Plaintiffs Silvie Pomicter and Last Chance for Animals has been served as follows:

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