

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

INDUSTRIAL WORKERS OF THE WORLD;)	
KENNETH MILLER; JOEL WALLER;)	
KEVIN MAYLE; and MICHELLE GAFFEY,)	
)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No.
)	
CITY OF PITTSBURGH; SPORTS AND)	
EXHIBITION AUTHORITY,)	
)	
Defendants.)	

VERIFIED COMPLAINT

AND NOW Come Plaintiffs, through undersigned counsel, and respectfully bring this Complaint to vindicate rights protected by the First and Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and in support thereof aver as follows:

Jurisdiction and Venue

1. This lawsuit seeks to vindicate rights protected by the First Amendment to the United States Constitution, as applied to local government by the Constitution's Fourteenth Amendment, and is brought pursuant to 42 U.S.C. Section 1983. This Court has jurisdiction over this action pursuant to 28 U.S.C. Section 1331(a) and Sections 1343(a)(3) and (4). This Court also has jurisdiction pursuant to 28 U.S.C. Sections 2201 and 2202 to declare the rights of the parties and to grant all further relief found to be necessary and proper. This Court also has supplemental and pendent jurisdiction under 28 U.S.C. Section 1367(a) to adjudicate the state constitutional claim.

2. Venue is proper in this Court because all parties to this action reside, and are located, this district, and all relevant facts to this action occurred in this District. 28 U.S.C. Section 1391.

Parties

3. Plaintiff Industrial Workers of the World (“IWW”) is an unincorporated organization with a mailing address in Pittsburgh of P.O. Box 99416, Pittsburgh, PA. 15233.

4. Plaintiff Kenneth Miller is, and at all relevant times, has been a resident of Pittsburgh, Pennsylvania. Plaintiff Miller is a member of the IWW.

5. Plaintiff Joel Woller is, and at all relevant times, has been a resident of Pittsburgh, Pennsylvania.

6. Plaintiff Kevin Mayle is, and at all relevant times, has been a resident of Chalk Hill, Pennsylvania.

7. Plaintiff Michelle Gaffey is, and at all relevant times, has been a resident of Pittsburgh, Pennsylvania.

8. Defendant City of Pittsburgh is a second class city organized under the laws of the State of Pennsylvania. At all relevant times, the City’s employees, representatives and agents were operating under color of state law.

9. The Sports and Exhibition Authority is a public authority organized under the laws of the State of Pennsylvania. At all relevant times, the Authority’s employees, representatives and agents were operating under color of state law.

FACTS

10. Plaintiffs “IWW,” Miller, Woller, Mayle, and Gaffey are involved, with many other individuals and organizations, in a public campaign concerning production of caps and other apparel for Major League Baseball teams by overseas sweatshops.

11. Plaintiffs, in the course of working on their issues, are often engaged, and intend to continue to be engaged, in the distribution of literature on City sidewalks and in other public fora.

12. Plaintiffs’ primary purpose in this literature distribution is to provide to the public information concerning their issues and thereby hopefully to gain public support for their positions.

13. One of the areas in which Plaintiffs have distributed literature and intend to continue distributing literature is public sidewalks surrounding the publically-financed stadium used by the Pittsburgh Pirates Baseball Club, PNC Park. The Park is located in Pittsburgh’s Northside and is bordered on four sides by the Allegheny River, which includes a public sidewalk running along side, and Bill Mazerowski Way, General Robinson Street and Federal Street.

14. It is believed, and therefore it is averred, that PNC park and areas surrounding PNC Park are owned by Defendant Stadium and Exhibition Authority.

15. It is believed, and therefore it is averred, that the Stadium and Exhibition Authority leases the stadium to the Pittsburgh Pirates, and has or will shortly dedicate back to the City streets and all or most of the public sidewalks surrounding the stadium.

16. On March 2, 2002, at about 9:30 A.M., Plaintiffs and approximately eight other persons went to the sidewalks surrounding PNC Park for the purpose of distributing literature concerning a labor union strike and the use of sweatshop labor to make apparel sold by all Major League Baseball teams, including the Pittsburgh Pirates (Exhibit A, attached) and for securing signatures from members of the public on a petition concerning the same issues. (Exhibit B attached).

17. Plaintiffs attempted to distribute literature and have petitions signed at, *inter alia*, the following locations:

- a. The sidewalk outside the stadium along Federal Street;
- b. The sidewalk outside the stadium along General Robinson Street;
- c. The sidewalk outside the stadium along Bill Mazerowski Way.

18. When attempting to distribute literature and obtain signatures on petitions on the Federal Street sidewalk adjacent to the stadium, Plaintiffs were instructed on a number of occasions by security personnel and City of Pittsburgh police that the Federal Street sidewalk along the stadium was private property, and they would have to cross Federal Street and leaflet on the sidewalk across the street from the stadium or go one-half way across the Roberto Clemente Bridge, which connects with Federal Street.

19. When attempting to distribute literature and obtain signatures on petitions on the General Robinson Street sidewalk adjacent to the stadium, Plaintiffs were instructed on a number of occasions by security personnel and City of Pittsburgh Police that the General Robinson Street sidewalk was private property, and they would have to cross General Robinson Street and leaflet on the sidewalk across the street from the stadium.

20. When attempting to distribute literature and obtain signatures on petitions on the Bill Mazerowski Way sidewalk adjacent to the stadium, Plaintiffs and individuals with Plaintiffs were instructed by security personnel and City of Pittsburgh Police that the sidewalk was private property and they could not distribute literature there.

21. On March 2, 2002 another female individual, whose name is unknown, was distributing literature on the Federal Street sidewalk adjacent to the stadium. Her literature promoted a baby penguins exhibit at the Pittsburgh Aviary and did not criticize the Pirates.

(Exhibit C, attached). At the same time as stadium security and Pittsburgh police were telling plaintiffs that they could not distribute literature on the sidewalks adjacent to PNC Park, this woman was allowed to continue doing so in that area. Not until plaintiffs complained that it was unfair to allow the woman with Aviary literature to leaflet while banning plaintiffs did the police ask her to stop leafleting.

22. Plaintiffs subsequently went into the Pirates' Store, not to distribute literature, but simply to look at labels and prices on merchandise. They were all arrested for Defiant Trespass based, in significant part, upon notice being given by oral communication on at least four occasions on the sidewalks outside the stadium. (See paragraphs 17-20; Exhibits D and E attached).

23. Plaintiffs were informed that they are now banned for life from PNC Park.

24. Plaintiffs planned on repeating the same political activity, namely, distributing literature and securing signatures on petitions, on Saturday, April 13, 2002, but Defendants' policies and the potential threat of arrest deter them and others from doing so.

25. Since March 12, 2002, Plaintiffs, through their attorneys, have sought to amicably resolve this matter in conversations with and letters to and from the Solicitor for the City of Pittsburgh, the Solicitor for the Stadium and Exhibition Authority, and the City of Pittsburgh Chief of Police.

26. Since Defendants have failed to provide assurances that their distribution of literature on sidewalks adjacent to PNC park will be respected, they are fearful that City police officers may again arrest them and other similarly-situated persons who distribute political literature, solicit petition signatures, and engage in other political activities on the sidewalks adjacent to the stadium.

27. Absent appropriate declaratory and injunctive relief Plaintiffs rights to distribute political literature, solicit petition signatures, and engage in other political activities on the sidewalks adjacent to the stadium may be threatened or restricted by Defendants. There is no adequate remedy at law for these violations.

CAUSES OF ACTION

Count I: First Amendment to the United States Constitution- Freedom of Speech

28. Defendants' actions in prohibiting Plaintiffs from distributing political literature, soliciting petition signatures, and engaging in other political activities on the sidewalks adjacent to PNC Park, quintessential public forums, violated the First Amendment to the United States Constitution, as applied to the states and local governments by the Fourteenth Amendment to the United States Constitution.

Count II: Article I, Section 7 of the Pennsylvania Constitution-Freedom of Speech

29. Defendants' actions in prohibiting Plaintiffs from distributing literature in public forums violated the free speech rights of Plaintiffs protected by Article I, Section 7 of the Pennsylvania Constitution.

Count III: First and Fourteenth Amendments to the United States Constitution-Due Process

30. Defendants' failure to promulgate, and act pursuant to, written policies that delineate where political activity is allowed, what activities are allowed, when they are allowed, and any

other applicable restrictions on political activities on the sidewalks adjacent to PNC Park and on in the streets on those days when the streets are closed to vehicular traffic, violated the First and Fourteenth Amendments to the United States Constitution, by failing to provide adequate notice to government officials and the public about permissible political activities.

Relief Requested

WHEREFORE, Plaintiffs request the following relief:

- a. Declare that the prohibition on persons distributing literature in the public forums adjacent to PNC park violates the First and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution;
- b. Enjoin, preliminarily and permanently thereafter, Defendants from prohibiting persons from distributing literature in public forums adjacent to PNC park;
- c. Award Plaintiffs compensatory damages;
- d. Award plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. Section 1988; and
- e. Grant such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA

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