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CENTRAL PARK DEMONSTRATION MIGHT DESTROY GREAT LAWN

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In the case of *National Council of Arab Americans v. City of New York*, 04 Civ. 6602 (WHP), 2004 U.S. Dist. LEXIS 16628 (S.D.N.Y. 2004), a number of organizations sought a court order directing the New York City Department of Parks and Recreation (the "Parks Department") to grant them a permit to hold a demonstration of 75,000 people on the Great Lawn in Central Park on the eve of the Republican National Convention in New York. In addition, the groups sought a order which would prohibit enforcement of the Parks Department's permit regulatory scheme.

As characterized by the federal district court, "[t]his [permit] application presents intersecting public interests: the right 'of the people peaceably to assemble' and the stewardship of a unique pastoral oasis amid a towering urban landscape."

FACTS OF THE CASE

In anticipation of the beginning of the Republican National Convention on August 30, 2004, the New York City Parks Department had received thirty different applications for special permits from a "broad spectrum of advocacy groups" to conduct rallies or demonstrations during the convention week.

On January 7, 2004, the National Council of Arab Americans (the "Council") had applied for a permit to conduct a rally on August 28, 2004 on the Great Lawn in Central Park. The event was described as one for 75,000 people that would run from 10:00 a.m. to 6:00 p.m. and require use of the Great Lawn for a 24 hour period. It did not provide for a rain cancellation date.

Because of the influx of other applications, the Parks Department notified the Council on March 13, 2004 that a decision on the Council's permit application would be deferred pending completion of the City's strategic plan for security in New York during the Convention. Nevertheless, in this initial response to the Council's application, the Parks Department expressed its concerns about "the capacity of the Great Lawn, the high risk of damage to the lawn and the displacement of pre-existing uses." The parties did not discuss the permit application or the City's letter.

In mid-June, the Parks Department advised the Council by telephone that "the permit as requested is denied" and "you are not getting the Great Lawn; there is nothing to resolve." On June 15, 2004, the Parks Department formally denied the Council's permit request, citing Sections 2.08(c)(1)-(2) and (5) of the Parks Rules and Regulations:

> Neither the Great Lawn nor the Sheep Meadow can accommodate an event of the nature you are planning. Since the Great Lawn was restored between 1995 and 1997, it has been carefully managed so that the restoration accomplished through significant public and private investment can be preserved.

In denying the permit request, the Parks Department did, however, offer to meet with the Council

"to discuss possible alternative locations that would be more suitable" for the demonstration. The Council appealed the permit denial, but did not respond to the Parks Department's overture to meet.

On June 30, 2004, the Parks Department denied the Council's appeal, once again alluding to the potential destruction of the Great Lawn should wet conditions exist at the time of the event. In so doing, the Parks Department reiterated its invitation for the Council to meet with City officials to discuss alternative locations.

The Council responded promptly on July 1, 2004. Although claiming that it was "amenable to meeting with the Parks Department to facilitate this matter," the Council imposed preconditions by seeking further explanation of the reasons for the City's permit denial and demanding a list of alternative locations for which the Parks Department would issue a permit.

The Parks Department did not respond to the Council's specific requests. Instead, on July 16, the City renewed its offer to meet with the Council "to find a suitable site for the proposed event on August 28, 2004." At that time, the Parks Department cautioned the Council that it might not be able to find a location for the event if the parties did not meet soon because of the significant number of permits that were being issued. This time, the Council chose not to respond.

On August 6, 2004, the Parks Department explained why it would not grant a permit to the Council for a demonstration on the Great Lawn. Specifically, the Parks Department advised the Council that the only organized events allowed on the Great Lawn since its 1997 restoration have been those events that can be cancelled when the ground is wet. More importantly, the Parks Department explained: "our management criteria for the Great Lawn are not compatible with events that cannot ... comply with our crowd control and security requirements even under optimum conditions."

In another pro forma gesture, the Parks Department invited the Council to meet to find an alternative site suitable for the event. The Council did not respond. Instead, the Council filed this lawsuit at the end of the day on Friday, August 13, 2004.

SIGNIFICANCE OF THE GREAT LAWN

As characterized by the federal district court, [t]he lack of engagement between the parties prior to this lawsuit contributed to each side's failure to appreciate the significance of the Great Lawn to the other."

> Prior to this litigation, neither side ever discussed revisions to the permit application, or alternative venues. The lack of a rain date or weather cancellation contingency was never ventilated. It was only after this litigation commenced that the Parks Department proposed alternative locations. In contrast, the City engaged in a dialogue with other advocacy groups to accommodate their respective concerns and reached agreement for demonstrations with all but two applicants.

Further, the court noted that "the Parks Department offered a number of alternative sites including Flushing Meadow Park in Queens and Van Cortland Park in the Bronx," which were "capable of handling events of 75,000 or more people in any weather condition." Moreover, the court acknowledged that the Parks Department had suggested an alternative site with Central Park itself, i.e., the East Meadow, "an area capable of accommodating a smaller crowd of 50,000 people in any weather condition." In the event that none of these alternative sites were acceptable to the event organizers, the Parks Department indicated that it "would have referred the Council to the New York City Police Department for assistance in finding a location elsewhere in the City."

For the following reasons, the Council maintained that the Great Lawn in Central Park was the only acceptable place for their planned demonstration.

> First, the rally coincides in time and space with the Republican National Convention and presents an opportunity to demonstrate against President George W. Bush. Second, it falls on the 41st anniversary of the 1963 civil rights march on Washington, D.C., led by Dr. Martin Luther King, Jr. and commemorates the struggle for civil rights. Third, the Great Lawn offers an "unconfined, family friendly mass rally venue whose historic tradition is devoid of confrontation and conflict." Fourth, "the Great Lawn is, for New York, what the Lincoln Memorial was for Washington, D.C.: A historic place, one that was associated with the mass mobilization for people of justice, seeking justice."

Accordingly, the Council argued that "that assembly on the Great Lawn is part of their political message, namely acceptance and equality of Arab Americans."

Similarly, the court noted that the Great Lawn was also of "tremendous import" to the Parks Department and the City of New York. As described by the court, after decades of overuse, the approximately twelve acre Great Lawn had been restored at a cost of over $18 million in 1997. Since that time, the Parks Department has managed the site under a comprehensive plan which "limits large events on the Great Lawn to no more than six each year.

> The Parks Department estimates that no more than 80,000 people can be accommodated at an event on the Great Lawn. Moreover, events must be dispersed over time to allow for aeration and over-seeding of the turf… Since restoration of the Great Lawn, no events have been permitted unless the size of the crowd was controlled and the event could be cancelled if wet turf conditions prevailed.

Accordingly, the Parks Department argued that "the Great Lawn would be damaged significantly by a rally of 75,000 if it rained the day before or the morning of the rally." Before 1996, use of Central Park's open areas was unlimited and the landscape suffered at a result. Based upon such experience, the Parks Department had learned that "a mass gathering on a wet Great Lawn would result in its closure for many months and thousands would be deprived of casual recreation or the opportunity to relax there."

As described by the Parks Department, there were five different permit applications to use the Great Lawn for a rally during the Republican National Convention week. Three of the five applicants had been accommodated in alternate venues. In the opinion of the City, "if all five were granted, the Great Lawn would be closed for a lengthy restoration and New Yorkers would lose something sublime." On the other hand, if just one event was allowed, the City feared it "would invite litigation from the other permit applicants." Furthermore, in the event of litigation, the City would have to provide a sufficient "time, place and manner justification" for choosing one group over another.

According to the Council, there was some "emotional pressure among some Americans for a demonstration in Central Park." Moreover, "if a court ruled the Great Lawn available for lawful mass assembly," the Council speculated that "a lot of people who might not at this moment think about coming to Central Park a week before would find a way to get there." In addition, the court noted that another group was seeking "a permit to hold a demonstration of 250,000 people on the Great Lawn on Sunday, August 29, 2004, the day after the rally requested in this action."

Under such circumstances, the Parks Department contended that "a crowd of 250,000 people and two back-to-back events would decimate the Great Lawn." Specifically, given the "intense public interest in these proposed events," the Park Department was concerned that a demonstration estimated to be 75,000 could swell several magnitudes, overwhelm the police and destroy the Great Lawn." Even the Council conceded that destruction of the Great Lawn would be "a terrible thing."

REASONABLE RESTRICTIONS?

As noted by the court, "[p]olitical demonstrations conducted in traditional public fora such as parks constitute protected activity under the First Amendment."

> Parks have immemorially been held in trust for use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. However, the right to engage in expressive political activity in public fora is not absolute. Such conduct "may be regulated in the interest of all and in consonance with peace and good order.
>
> Accordingly, municipalities may regulate the use of public facilities "to assure the safety and convenience of the people in their use." Reasonable "time, place or manner" restrictions on protected speech are permissible so long as they are content-neutral, narrowly tailored to serve a significant governmental interest, and leave open adequate alternative channels of communication.

The Council contended that the City "should be enjoined from enforcing the Parks Department's permit scheme because it is neither content-neutral nor narrowly tailored to a significant governmental interest." Furthermore, the Council claimed "the scheme allows City administrators unfettered discretion in making permit determinations, thus rendering it difficult to distinguish between legitimate and abusive exercises of authority."

CONTENT NEUTRAL REGULATION?

As cited by the court, "Parks Department rules and regulations require that any group of more than twenty persons desiring to hold an event on park property apply for a special event permit."

> The permit regulations govern all uses of the City's parks that involve more than 20 people, except "casual park use by visitors or tourists." Permits are therefore needed for barbeques, picnics, concerts, athletic and social events, as well as First Amendment protected activities such as religious services or political demonstrations.

Further, upon receipt of an application, the Parks Department would determine the suitability of the location sought. Moreover, pursuant to the regulations, the Parks Department could deny a special event permit for five reasons:

> (1) the location sought is unsuitable because of landscaping, planting, or other environmental conditions; (2) the location sought is unsuitable because it is a specialized area, or because the proposed event cannot reasonably be accommodated in that location; (3) the date and time requested have previously been allotted by permit; (4) the applicant, having been granted a permit previously, knowingly violated a material term or condition of that permit; or (5) the event would interfere unreasonably with the enjoyment of the park by other users.

In the event a permit application is denied, the regulations required the Parks Department to "employ reasonable efforts to offer the applicant suitable alternative locations and/or time and/or dates for the proposed dates."

In the opinion of the court, this permit scheme appeared to be content neutral on its face. In other words, there was no indication that "the government has adopted a regulation of speech because of the disagreement with the message it conveys."

> Here, the permit scheme requires a permit for any "special event" involving more than twenty people. The lone exception for "casual park use by visitors or tourists," 56 R.C.N.Y. § 1-02, does not discriminate based on content because it does not turn on the message, if any, espoused by visitors or tourists. Rather, the distinction relates to the manner in which groups larger than twenty assemble.

Since "[t]he Park regulations refer neither to the content of the activity, nor to the event organizers or their views," the court held the permit scheme was content-neutral.

NARROWLY TAILORED

In addition to being content neutral, the court noted a the permit scheme must be "sufficiently tailored to a significant governmental interest." According to the court, "[a] municipality's goal of managing and maintaining park facilities constitutes a significant government interest."

In this particular instance, the court found the New York City permit scheme was “narrowly tailored to the government’s interest” in managing “upkeep of the parks.” Specifically, the permit scheme was “limited to events exceeding a certain size, while enabling the Parks Department to regulate the manner in which events take place and the number of attendees at events.”

In addition, the court found the permit scheme satisfied “the constitutional requisite of allowing for adequate alternative channels of communication.” Specifically, the court noted that the permit scheme required the Parks Department to make "reasonable efforts" to provide applicants with "suitable alternative locations" for the requested event if their original permit is denied.

The Council, however, contended that “the regulations fail the neutrality requirement” because they allowed “the Parks Department administrators unfettered discretion in deciding whether to grant or deny a permit.” In addressing this claim, the court acknowledged that “[t]ime, place, or manner restrictions of speech in public fora are unconstitutional if they confer overly broad discretion on regulating officials.”

> Where the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content. Thus, when assessing the constitutionality of a content-neutral time, place and manner restriction, the analysis hinges on whether the regulation contains adequate standards to guide an official's decision and render that decision subject to effective judicial review.

Applying these principles to the facts of the case, the court found “the regulations constrain the Parks Department decision-makers by delineating five specific grounds on which a permit may be denied. As a result, the court concluded that “the Parks Department's permit scheme factors are reasonably specific and objective, and do not leave the decision 'to the whim of the administrator.'" Moreover, the court noted that “a permit denial may be appealed within ten days.”

> Although, the permit scheme allows Parks Department administrators to consider the "nature" of the proposed event when deciding whether to issue a permit, a Parks Department representative testified that these provisions "are applied based upon the effect of the event on the park and surrounding area, and not upon the message communicated at the event." The Parks Department's narrowing construction of the regulations invalidate any suggestion that this provision allows officials to take into account the content or message of an applicant's proposed event.

As a result, the federal district court found the Council had failed to establish any evidence to support their claim that the Parks Department permit scheme was unconstitutional. The federal district court, therefore, denied the Council’s request for a court order requiring the Parks Department to grant “a permit to hold a demonstration on the Great Lawn on August 28, 2004” on the specific terms requested.