

### *Parade Permit Restricts Freedom of Speech*

The U.S. Ninth Circuit Court of Appeals struck down Seattle's parade ordinance as a violation of the First Amendment in *Seattle Affiliate of the October 22<sup>nd</sup> Coalition to Stop Police Brutality, Repression and the Criminalization of a Generation v. City of Seattle, et al.*, \_\_\_ F3d \_\_\_ (9<sup>th</sup> Cir., December 12, 2008); 2008 U.S. App. LEXIS 25036. The Court found the ordinance was overbroad in that it allowed unbridled discretion for City officials. The opinion highlights the sometimes tricky balancing act that cities must engage in to ensure free speech while also maintaining adequate public safety mechanisms.

Plaintiff-Appellant Coalition is part of a national group that holds a coordinated annual day of protest in varied forms and in this instance, a parade. Defendant-Appellee City's ordinance requires anyone wishing to conduct a parade, defined in the Seattle Municipal Code as "any organized movement or march of persons and/or things which requires the closure of streets to prevent a conflict with the regular flow of vehicular traffic", to obtain a permit. (\*3 – 4). The Coalition has applied for and received a permit from the Chief of Police every year since 2001. Three of those years, 2002, 2003 and 2004, the City also attached a condition to the permit allowing the parade to proceed only on sidewalks if there were fewer than 200 marchers. Two years the condition was imposed in advance and one year it was imposed at the time of the event. Neither the 200 marcher minimum nor the formula used to derive this number was defined in the City's code. The Coalition showed that similar restrictions were attached to nine percent of permits issued for all parades between January 1999 and July 2005, yet the minimum number of marchers varied and the condition was imposed more frequently on political or protest parades.

The Coalition brought an action in district court challenging the ordinance and the City's police conduct as applied. The as applied aspect was the subject of a settlement agreement and therefore did not go before the Court of Appeals. The facial ordinance challenge was subject to cross-motions for summary judgment in which the City prevailed and upon which the Coalition appealed.

The ordinance clearly states that the Chief of Police has no authority to deny a permit, only to modify the parade in various ways, including the "proposed line of movement or march", which the City has interpreted to include restricting the march to sidewalks. (\*7). The Coalition showed that under the City's definition of parades there exists a reference to closure of streets and argued that any condition that confines a march to sidewalks is an effective denial of a parade permit. The City argued that sidewalk marches qualify as parades under the ordinance as they could require street closures for police escorts or traffic control.

The Court allowed the facial challenge to the ordinance because, as applied, the ordinance allowed the deciding official to grant or deny a permit, instead of just allowing mere modifications as the City claimed. The Court also stated that the ordinance did not contain obvious guidelines because the police officials believed they were authorized to transform a parade into a group walk on the sidewalk. The clearly stated intent of the ordinance, to grant all permits, was undermined by the government official's ability to transform the event to a non-parade. Finally, the challenge was allowed because even if the ordinance did not allow the Chief to deny or grant a permit, it did allow him to permit or deny expressive activity.

To be valid under the First Amendment, the ordinance may only restrict speech through reasonable time, place, and manner requirements. Such restrictions must (1) not delegate overly broad discretion to a government official; (2) not be based on the message's content; (3) be narrowly tailored to serve a significant government interest; and (4) leave open ample alternatives for communication. The Court found that the City's ordinance was unconstitutional because it delegated overbroad discretion to the City. The ordinance is overbroad because it does not provide enough guidance to officials and gives them too much leeway in restricting marcher's access to streets. Further, the ordinance does not require that officials articulate their reasons for denying permission to march nor does it provide a mechanism for any kind of appeal or judicial review of the City's actions. Requiring reasons for a particular action provides an important check on the official's discretion by "facilitating a review of the action" and "ensuring the determination is properly limited in scope." (\*32 – 33). Without these checks on official power, there is a risk that officials could engage in "content-based discrimination that would be effectively immune from judicial scrutiny." (\*38).

The dissent opined that the majority's conclusion is not supported by Supreme Court precedent or Ninth Circuit Court case law. The dissent also disputes "the majority's elevation of procedural safeguards to central importance." (\*50). The dissent adds that sister courts have found that sidewalk marches are in fact valid substitutes for street marches pointing out that since the modifications allowed under the ordinance are content neutral and limited in scope there is no unbridled discretion vested in the government official.

The Court reversed the grant of summary judgment to the City.