

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIAMI DIVISION

Case No. : 07-21088-CIV-ALTONAGA-Turnoff

**MIAMI FOR PEACE, INC., SOUTH
FLORIDA PEACE AND JUSTICE
NETWORK, and HAITI SOLIDARITY,
INC.**

Plaintiffs,

v.

**MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,**

Defendant.

FIRST AMENDED COMPLAINT

This is a lawsuit seeking declaratory relief, injunctive relief, and compensatory damages, for violation of Plaintiffs' First Amendment and Fourteenth Amendment rights. Plaintiffs, comprised of organizations whose members are concerned about current political, social and economic issues affecting the region and the world, challenge several provisions of the Miami-Dade County Code ("**MD Code**" or "**Code**") that impose impermissible permit requirements on the right to engage in expressive activity in quintessential public fora in Miami-Dade County, and which code provisions also violate due process rights of Plaintiffs' members.

JURISDICTION AND VENUE

1. This action seeks declaratory relief, injunctive relief and compensatory damages pursuant to 42 U.S.C. §1983, for ongoing and threatened injury to the First Amendment and Fourteenth Amendment rights of organizations engaged in lawful expressive activity within Miami-Dade County, Florida. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§1331 and 1343, and in accordance with the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202.

2. Venue is proper in the Southern District of Florida, Miami Division, under 28 U.S.C. §1391(b). All parties reside, in or are headquartered in the Southern District; the Defendant is located in the Miami Division, and all of the acts or omissions complained of herein have occurred or will occur in the Miami Division.

INTRODUCTION

3. Miami-Dade County (hereinafter "**M-D County**") employs a permit scheme for expressive activity in public fora that is both an unlawful prior restraint and an unreasonable time, place and manner regulation. Adopted in 1973, it requires a "permit issued by the Sheriff" for every "parade or procession." The ordinance is absolutely devoid of any standards to guide the decision of whether and under what conditions a permit will issue, how long public officials are allowed to decide whether they will issue a permit, and what conditions may be imposed on expressive activities. The absence of any standards in these key areas means that the ordinance vests public officials with unbridled discretion and invites content-based decisions based on the nature of the speaker. This is a forbidden basis on which to rest a permit scheme that requires a license to engage in protected speech; the standardless permit scheme violates Plaintiffs' First Amendment rights by impermissibly limiting their rights to speech, association, assembly and petition. For these reasons, the Defendant must be enjoined from prohibiting the lawful exercise of First Amendment-protected activity. Further, the Plaintiffs seek a declaration that the county's "loitering ordinance" is a violation of Due

Process insofar as it is vague and an abrogation of protected liberty interests, and further seek injunctive relief precluding the enforcement of said ordinance by the Defendant.

PARTIES

Plaintiffs :

4. Plaintiff **MIAMI FOR PEACE** (hereinafter “MFP”) is a not-for-profit corporation located in Miami, Florida, incorporated in Florida since 2003. Among the activities MFP has participated in are protests in the tri-county area in March 2006 to commemorate the third anniversary of the Iraq War; an Iraq War protest in Doral, Miami-Dade County, Florida in March 2007 to commemorate the fourth anniversary of the Iraq War; a protest in January 2007 to advocate shutting down the Guantanamo facilities where alleged terrorism suspects are being held; an event in February 2007 in downtown Miami to support freedom of speech; and a monthly protest against the Iraq War, along US 1 in Miami during the evening rush hour. Plaintiff MFP was one of the key organizing groups of the REJECT THE BUSH AGENDA events (hereinafter “RBA”), including the march and rally that occurred on the afternoon of April 28, 2007. Members of MFP will be actively participating in the *September 15th “End the War” March and Rally* in Miami-Dade County, and will be distributing flyers in Miami-Dade County and Broward County prior to the event to publicize its occurrence. MFP expended time and money to organize its membership for the April 28th RBA demonstration event, but MFP was impeded in its ability to organize and generate turnout by Defendant Miami-Dade County’s ordinances and actions, and suffered damages as a direct and proximate result of defendant’s policies and practices.

5. Plaintiff **SOUTH FLORIDA PEACE & JUSTICE NETWORK** (hereinafter “SFPJN”) is an unincorporated network of peace and social justice groups in the Miami-Dade/Broward/Palm Beach tri-county region. Among the activities that SFPJN has participated in or organized, since early 2006, are: a march and rally in Fort

Lauderdale in March 2006 to commemorate the third anniversary of the Iraq War, which involved temporary lane closures along State Road 84, a major east-west artery in Fort Lauderdale; attendance at rallies and demonstrations in support of striking janitors at the University of Miami and janitors at Nova Southeastern University fired for unionizing efforts in 2006; a demonstration to support the campaign of the Coalition of Immokalee Workers to convince Burger King to assure that tomato pickers are paid a decent wage; activities in support of the Umoja Village, an encampment in the Liberty City area of Miami for people lacking housing. SFPJN was a participating entity in RBA, and many of its member organizations participated in the April 28th march and rally at Miami-Dade College. Members of SFPJN will be actively participating in the *September 15th “End the War” March and Rally* in Miami-Dade County, and will be distributing flyers in Miami-Dade County and Broward County prior to the event to publicize its occurrence. SFPJN expended time and money to organize its membership for the April 28th RBA demonstration event, but SFPJN was impeded in its ability to organize and generate turnout by Defendant Miami-Dade County’s ordinances and actions, and suffered damages as a direct and proximate result of Defendant’s policies and practices.

6. Plaintiff **HAITI SOLIDARITY** (hereinafter “HS”) is a not-for-profit corporation located in Miami, Florida, having been incorporated since 2004 in the State of Florida. Among the activities HS has participated in are a mass rally of 1,000 people within the past month in front of the Immigration building at the corner of NE 79th Street and Biscayne Boulevard, to protest discrimination against Haitians who recently came ashore at Hallandale Beach, Florida; various immigrants’ rights demonstrations during 2006, some in downtown Miami and others at the Immigration building on NE 79th Street; and a march of approximately 6,000 people in downtown Miami to urge that the Haitian government free Father Gerard Jean-Juste, which took place approximately a year and a half ago. Plaintiff HS brought one of the largest contingents of demonstrators to the April 28th demonstration at Miami-Dade College. Members of HS will be actively

participating in the *September 15th “End the War” March and Rally* in Miami-Dade County, and will be distributing flyers in Miami-Dade County and Broward County prior to the event to publicize its occurrence. HS expended time and money to organize its membership for the April 28th RBA demonstration event, but HS was impeded in its ability to organize and generate turnout by Defendant Miami-Dade County’s ordinances and actions, and suffered damages as a direct and proximate result of Defendant’s policies and practices.

Defendant :

7. Defendant **MIAMI-DADE COUNTY** (hereinafter “M-D County”) is a political subdivision of the State of Florida, with the capacity to sue and be sued. It is the legal entity responsible for the actions of the Miami-Dade County Board of County Commissioners (hereinafter “M-D BCC”), including the County Code promulgated by the M-D BCC, as well as the actions of law enforcement officers employed in the County. M-D County controls and is responsible for the Miami-Dade Police Department (hereinafter “M-D PD”), including the actions taken by the Metropolitan Sheriff and law enforcement officers employed by the M-D PD.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Miami-Dade County Code Provisions:

8. Miami-Dade County has an antiquated permit scheme for all parades in the unincorporated portions of the county, first adopted in 1971 and last revised in 1973. Provisions of this type have been repeatedly condemned insofar as they are clearly

violative of First Amendment protections for the freedoms of speech, assembly and petition.

9. **Miami-Dade Code § 30-274: Parades and processions; permit required**

In the unincorporated areas, no procession or parade, excepting the forces of United States Armed Services, the military forces of the State, the forces of the police and fire departments, and funeral processions, shall occupy, march, or proceed along any street or roadway except in accordance with a permit issued by the Sheriff and such other regulations as are set forth herein which may apply.

10. Miami-Dade County has a code provision criminalizing the *standing* or *remaining on* any public sidewalk or public place so as to *hinder* or *impede* the passage of pedestrians or vehicles; this section was first adopted in 1967, and last revised in 1982. This criminalization of *loitering* contains no exception for First Amendment-protected activity or for innocent conduct protected by federal jurisprudence.

11. **Miami-Dade County Code § 21-31.1: Disorderly Conduct, Loitering, Penalties.**

(b) *Loitering*. For the purpose of this section “loitering” means the act of standing, remaining or sleeping on, in or about any public street, public sidewalk, public overpass, public bridge, public library or other place specifically enumerated herein. A person commits the offense of loitering when he knowingly:

(1) Loiters on any public street, public sidewalk, public overpass, public bridge or public place so as to hinder or impede the passage of pedestrians or vehicles.

...

(4) Loiters in or about a school, college or university campus so as to hinder to impede the orderly conduct of instructional, recreational or other school activities.

...
(c) *Penalties for violation.* . . . Any person convicted of a violation of any other subsection of this section shall be punished by a fine of five hundred dollars (\$500.00) or by imprisonment in the County Jail for a term not to exceed sixty (60) days, or by both such fine and imprisonment, in the discretion of the court. This section is applicable in both the incorporated and unincorporated areas of Miami-Dade County and all violations thereof shall be prosecuted in the County Court.

Plaintiffs' Past Efforts to Obtain Permit to Demonstrate in Parade & Rally:

12. Various groups in the social justice and peace movements learned in March 2007 that President George W. Bush was scheduled to give a commencement address on April 28th at Miami-Dade College. Initial inquiries to the county police relating to the possible need for a permit to march, rally and otherwise demonstrate during the President's visit were made on or about April 1, 2007, by Ray Del Papa of Plaintiff SFPJN. A tentative meeting to resolve demonstration issues was set for April 6th, but this meeting was cancelled by the Miami-Dade Police Department ("M-D PD").

13. On April 14th Linda Belgrave of MFP received an e-mail from M-D PD indicating that M-D PD would not accommodate a "march route" for the demonstration planned on April 28th. No reason for the arbitrary rejection was provided by the M-D PD.

14. As to the request for a location for a rally, Ms. Belgrave was advised that the M-D PD was not willing to meet to discuss a demonstration location until just a few days prior to the event date. On April 16th, Ms. Belgrave received numerous inquiries by organizations seeking information about the RBA demonstration, particularly the march route. Ms. Belgrave advised these organizations that county authorities had refused to either approve tentative plans or to meet to discuss critical issues.

15. On April 17th and 18th, upon request by the Plaintiffs, legal counsel for Plaintiffs attempted to resolve outstanding issues arising from the RBA political march and rally with Miami-Dade County, to no avail.

16. The refusal by the M-D PD to accommodate the RBA's proposed political parade route, and the failure of the M-D PD to provide a location for the post-parade rally, caused legitimate fear among the Plaintiffs that the M-D PD would endeavor to shut down any rally on April 28th through enforcement of its quarter-century old loitering ordinance.

17. In light of the M-D PD'S denial of a lane closure for the political parade in which Plaintiffs planned to participate on April 28th, the hundreds of participants, including Plaintiffs' members, were forced to crowd onto the sidewalks, and legitimately feared that they risked arrest for hindering or impeding the passage of pedestrians. Additionally, Plaintiffs were aware that the loitering ordinance carried maximum

penalties of a \$500.00 fine and/or sixty (60) days in jail, which are serious penalties that discouraged participation in the march. The County's parade permit ordinance and its loitering ordinance infringed upon Plaintiffs' First Amendment right to peaceably assemble, and to be visible on the street to their intended audience while exercising their First Amendment freedoms of speech, assembly and petition.

18. As a result of the impact of the Defendants' parade permit scheme and overbroad loitering ordinance, the Plaintiffs were forced to seek judicial relief by way of the filing, in U.S. District Court, of a Verified Complaint, Emergency Motion for Preliminary Injunctive Relief, Memorandum of Law supporting said motion, and related papers. As a result of this civil action, Defendant Miami-Dade County finally acquiesced, and agreed to accommodate the Plaintiffs' First-Amendment-protected activity.

September 15, 2007 Demonstration Event:

19. MFP, SFPJN, HS and other organizations are planning to hold a march and rally in Miami-Dade County on Bird Road (SW 42nd Street) between Noon and 2:00 p.m. on September 15, 2007. The proposed march route is about a half-mile long, starting just north of the Kendall Regional Medical Center, at Bird Road (SW 42nd Street) and SW 119th Avenue, and proceeding westbound along Bird Road, stopping between SW 128th and SW 129th Avenues, at the Congressional Field Office of U.S. Representative Mario Diaz-Balart, located at 12851 SW 42nd Street. The march will not block the entrances to

the congressional office. At the conclusion of the march, it is planned that the march participants will hold a rally in front of the Congressman's office.

CAUSES OF ACTION

20. As to each cause of action delineated below in Counts One through Three, Plaintiffs advance their federal constitutional claims against the governmental entities as state actors, through the operation of the Fourteenth Amendment.

COUNT ONE

***Monell* Claim - Official Policy to Suppress Protected Speech and Assembly
(42 USC § 1983 – Violation of First Amendment - Various Grounds)
County Code § 30-274 – Parades & Processions Ordinance
By ALL PLAINTIFFS Against MIAMI-DADE COUNTY**

21. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-20, as if set forth at length herein.

22. At all times relevant hereto, the Miami-Dade County Board of County Commissioners ("M-D BCC") was the final policymaker of Miami-Dade County ("M-DC") for purposes of adopting ordinances and other policies formally regulating constitutionally-protected expression and assembly within the county's boundaries.

23. In December, 1971, the M-D BCC enacted Ordinance No. 71-94, now codified at County Code § 30-274 (not revised since March, 1973), precluding any “procession or parade” in the unincorporated areas of Miami-Dade County, *except in accordance with a permit issued by the Sheriff*. This ***Parades & Processions Ordinance*** is unconstitutional on its face as an impermissible prior restraint, containing terms which provide unfettered discretion to law enforcement officials, lack of deadlines for considering applications, lack of appropriate review for unfavorable decisions, and other deficiencies.

24. County Code § 30-274 was used as the basis for defendant M-DC’s refusal to issue a permit for the Plaintiffs’ political march on April 28, 2007, and it is reasonably anticipated by Plaintiffs that said ordinance will be used as the basis to delay or refuse the issuance of a permit for the Plaintiffs planned march and rally on September 15, 2007.

25. The adoption by the M-D BCC of Code § 30-274, and the implementation of this ***Parades and Processions Ordinance*** by the M-D PD, were the proximate cause of the deprivation of the First Amendment rights of Plaintiffs and other demonstrators for the planned activities on April 28, 2007, on public streets, sidewalks and other public property adjacent to M-D College, and are the proximate cause of the “chilling,” including reluctance of some to participate, uncertainty and confusion, surrounding the Plaintiffs’ First Amendment-protected core political events on September 15, 2007. Plaintiffs seek redress for this violation of the First Amendment through the operation of 42 U.S.C. § 1983.

COUNT TWO

Monell Claim - Official Policy to Suppress Protected Speech and Assembly

(42 USC § 1983 – Violation of First Amendment - Overbreadth)

County Code § 21-31.1 – Loitering Ordinance

By ALL PLAINTIFFS Against MIAMI-DADE COUNTY

26. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-20, as if set forth at length herein.

27. At all times relevant hereto, the M-D BCC was the final policymaker of Miami-Dade County for purposes of adopting ordinances and other policies formally regulating conduct in public, including constitutionally-protected expression and assembly within the county's boundaries.

28. In March, 1967, the M-D BCC enacted Ordinance No. 67-17, now codified at County Code § 21-31.1. The ***Loitering Ordinance*** provides that it is unlawful to engage in “standing” or “remaining” on any public street, sidewalk or “place” so as to hinder or impede vehicular or pedestrian traffic, *see* M-D County Code § 21-31.1 (b) (1). This section is applicable in the incorporated and unincorporated areas of Miami-Dade County. *See* M-D County Code § 21-31.1 (c).

29. This ***Loitering Ordinance*** is unconstitutional on its face as an impermissibly overbroad prohibition, that has had, and will in the future have, a substantial impact on conduct protected by the First Amendment, including the expressive conduct of these Plaintiffs.

30. The anticipated use of County Code § 21-31.1 by the M-D PD has chilled the First Amendment-protected activities of the Plaintiffs in the past, and may cause the arrest of members of the plaintiffs, as well as others similarly situated who wish to exercise their rights of free speech, assembly and association on September 15, 2007.

31. The adoption by the M-D BCC of Code § 21-31.1, and the implementation of this *Loitering Ordinance* by the M-DPD were the proximate cause of the deprivation of the First Amendment rights of Plaintiffs, and other demonstrators similarly situated, with respect to the activities on April 28, 2007 on public streets, sidewalks and other public property adjacent to M-D College, and are the proximate cause of the “chilling,” including reluctance of some to participate, uncertainty and confusion, surrounding the Plaintiffs’ First Amendment-protected core political events on September 15, 2007. Plaintiffs seek redress for this violation of the First Amendment through the operation of 42 U.S.C. § 1983.

COUNT THREE

Monell Claim - Official Policy to Suppress Protected Speech and Assembly
(42 USC § 1983 – Violation of 14th Amendment – Vagueness and Liberty Interest)
County Code § 21-31.1 – Loitering Ordinance
By ALL PLAINTIFFS Against MIAMI-DADE COUNTY

32. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-20, as if set forth at length herein.

33. At all times relevant hereto, the M-D BCC was the final policymaker of Miami-Dade County for purposes of adopting ordinances and other policies formally regulating conduct in public, including constitutionally-protected expression and assembly within the county’s boundaries.

34. In March, 1967, the M-D BCC enacted Ordinance No. 67-17, now codified at County Code § 21-31.1. The ***Loitering Ordinance*** provides that it is unlawful to engage in “standing” or “remaining” on any public street, sidewalk or “place” so as to hinder or impede vehicular or pedestrian traffic, *see* M-D County Code § 21-31.1 (b) (1). This section is applicable in the incorporated and unincorporated areas of Miami-Dade County, *see* M-D County Code § 21-31.1 (c).

35. This ***Loitering Ordinance*** is unconstitutional on its face, as an impermissibly *vague* prohibition that has a substantial impact on conduct protected by the Due Process Clause of the Fourteenth Amendment, for two reasons. First, this ordinance fails to provide the kind of notice that enables ordinary citizens to understand what precise conduct it prohibits; second, it authorizes arbitrary and discriminatory enforcement through its lack of precision.

36. This ***Loitering Ordinance*** is further unconstitutional on its face as an impermissible prohibition on conduct that is protected by the *liberty interest* arising from the Due Process Clause of the Fourteenth Amendment. The members of the plaintiff organizations have a significant liberty interest in standing on public sidewalks and public places according to their inclination.

37. The use of County Code § 21-31.1 by the M-D PD chilled the First Amendment-protected activities of the Plaintiffs on April 28, 2007, and may cause the arrest of members of the Plaintiffs’ organizations, as well as others similarly situated who wish to exercise their rights of free speech, assembly and association, on September 15, 2007.

38. The adoption by the M-D BCC of Code § 21-31.1, and the past and future implementation of this *Loitering Ordinance* by the M-D PD in a manner disallowed by the 14th Amendment, are the proximate cause of the past deprivation of the First Amendment rights of Plaintiffs without due process, and other demonstrators similarly situated, on April 28, 2007, with respect to the planned activities on public streets, sidewalks and other public property adjacent to M-D College, and the proximate cause of the “chilling,” including reluctance of some to participate, uncertainty and confusion, the Plaintiffs’ First Amendment-protected core political events on September 15, 2007. Plaintiffs seek redress for this violation of the 14th Amendment through the operation of 42 U.S.C. § 1983.

PRAYER FOR RELIEF - ALL COUNTS

WHEREFORE, Plaintiffs seek judgment against Defendant for the following relief:

1. A preliminary and permanent injunction, enjoining Defendant, its officers, agents and employees from enforcing Miami-Dade County Code §§ 30-274 and 21-31.1(b);
2. For a declaration that Defendant Miami-Dade County’s challenged ordinances violate Plaintiffs’ rights to free speech, assembly, association and to petition the government for redress of grievances, under the First Amendment, and are a further violation of due process rights under the Fourteenth Amendment to the United States Constitution;
3. For compensatory damages, as permitted by law;
4. For costs of suit pursuant to 42 U.S.C. § 1920 and 42 U.S.C. § 1988;
5. For attorneys’ fees pursuant to 42 U.S.C. § 1988;
6. For such other relief as this Court deems just and proper.

Dated: June 4, 2007

s/Robert W. Ross, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served on June 5, 2007, on all counsel identified on the attached Service List, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electric Filing.

s/Robert W. Ross, Jr.

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