

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOE BEASLEY,
VINCENT FORT,
LILIANA BAKHTIARA,
JASON WOODY,
MELVIN SMITH,
JOE DIAZ,
and OCCUPY ATLANTA,

Plaintiffs,

v.

CITY OF ATLANTA,

Defendant.

Case Number

VERIFIED COMPLAINT

COME NOW Plaintiffs in the above-styled action and file this Verified Complaint for declaratory judgment, emergency preliminary and permanent injunctive relief. In support thereof, Plaintiffs offer the following.

I. JURISDICTION AND VENUE

1. Plaintiffs, in bringing an action to redress the deprivation of constitutionally protected rights under the First Amendment of the United States Constitution, assert claims presenting a federal question under 42 U.S.C. § 1983. Jurisdiction

is predicated upon 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391(b) because all actions complained of occurred within the boundaries of this judicial district and all parties have their primary place of business with this district or reside in such.

II. PARTIES

3. Plaintiff **Joe Beasley** is a military veteran and civil rights leader. He is human resources director at the Antioch Baptist Church, president of the Joe Beasley Foundation, and the southern regional director of the Rainbow/PUSH coalition. His humanitarian efforts extend across national borders and he actively worked to end apartheid in South Africa, to free Nelson Mandela, to provide healthcare and educational facilities in Haiti and to provide medical supplies to numerous impoverished countries. He participated in the Occupy Atlanta protests and who was arrested at the protests on October 26, 2011. He participated in the protests as part of his ongoing efforts to end oppression of all kinds and plans to protest again in Woodruff Park on November 5.
4. Plaintiff **Vincent Fort** is a state senator for Fulton County's 39th District. In his role as state senator, he has actively worked to end predatory lending, discrimination against persons with disabilities, and racial profiling. He has

been recognized and honored by organizations such as the NAACP, the AARP, the National Association of Consumer Advocates, and the Anti-Defamation League. He has participated in the Occupy Atlanta protests several times each week and was arrested at the protests on October 26, 2011. He plans to protest again in Woodruff Park on November 5.

5. Plaintiffs **Liliana Bakhtiara, Jason Woody, Melvin Smith, and Joe Diaz** are protesters who have joined others in Occupy Atlanta. Each is a resident of Georgia and over eighteen years of age. Each has participated in the Occupy Atlanta protests and each plans to protest again in Woodruff Park on 5 November 2011.
6. Plaintiff **Occupy Atlanta** is an unincorporated organization consisting of individuals who voluntarily join to voice their disagreement with governmental policies that create ongoing political and social disenfranchisement of the American populace, to combat inequitable concentrations of power and wealth, and to enact policies and laws based upon the fundamental principle of absolute respect for all people.
7. Defendant **City of Atlanta** (“the City”) is a municipal corporation incorporated under the laws of the State of Georgia. Pursuant to OCGA § 9-11-4, service upon the City may be perfected by serving Mayor Kasim Reed at Atlanta City

Hall located at 55 Trinity Avenue SW, Atlanta, Georgia 30303.

III. FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

Background of the Occupy movement

8. On 17 September 2011, a movement now known as “Occupy Wall Street” began in New York City. The goal of the movement was to protest and end growing wealth disparity in the United States, the disenfranchisement of the poor and middle class, and to combat systemic discrimination based upon race, sex, gender, class, nationality, and sexual orientation. The Occupy Wall Street movement garnered international attention and similar protests have begun in various cities across the United States and the world.
9. Occupy Atlanta is a direct outgrowth of the Occupy Wall Street movement and adheres to the same principles and political message. The purpose of Occupy Atlanta is to voice political concerns, to provide an avenue of political speech, and to encourage political participation and awareness by its members and the general public.
10. Occupy Atlanta is committed to peaceful and responsible political protests. Occupy Atlanta does not condone or tolerate any form of violence, discrimination, waste, or public nuisance.
11. Occupy Atlanta leaders have stated publicly that violence and law breaking will

not be permitted, and several members of the organization have been charged with the task of ensuring that the protests remain peaceful and lawful.

12. Occupy Atlanta is governed by a General Assembly which is driven by consensus decision-making. There is no single representative with decision-making authority, and all decisions are made pursuant to established procedures.

13. Occupy Atlanta communicates with its members and the general public through its website, <http://www.OccupyAtlanta.org>. Occupy Atlanta also maintains a Facebook page at <http://www.facebook.com/OccupyAtlanta> and a live video stream located at <http://www.livestream.com/OccupyAtlanta>.

14. The groups within the “Occupy” movement, including Occupy Atlanta, give voice to their speech by maintaining a 24-hour presence on a specific public property and by engaging in protected speech and assembly during that time. This style of protest and assembly have garnered international attention and spurred political discourse throughout the county.

15. The use of 24-hour protests is one of the fundamental and distinguishing characteristics of the Occupy movement. Without such protests, individuals associated with the movement will be deprived of the most effective means of assembling and communicating their political message.

Occupy Atlanta in Woodruff Park

- 16.** On 6 October 2011, individuals associated with Occupy Atlanta began protests in Woodruff Park (“Woodruff Park”), located on the corner of Peachtree Street and Edgewood Avenue in the City of Atlanta.
- 17.** The protests began with only a few individuals and quickly grew. The protests were focused on voicing political concerns, advancing the political causes of the Occupy movement and, at all times, focused on providing an avenue for the free expression of political ideas and a common point of assembly for interested citizens.
- 18.** Each night, a number of individuals remained in Woodruff Park overnight to maintain the protests. Those who remained in Woodruff Park maintained a quiet presence and did not disrupt any nearby road, thoroughfare, business, apartment, or public facility. Activities continued through the night and individuals assembled to participate in the free expression of ideas.
- 19.** Through the course of the protests, the Occupy Atlanta members formed various committees to help citizens become involved in the protests and political process. These committees were divided into Media, Writing/Press, Logistics, Food, Coordinating, Medical Safety, Child Care, Legal, Welcome and Orientation, Anti-racism, Outreach, Photography and Videography, Arts

and Literature, and Information Technology.

- 20.** Protesters also brought coolers of food and drinks as well as medical supplies, literature, and political signs. In order to support the protesters who remained in Woodruff Park over night, some brought tents, collapsible chairs, and sleeping bags.

Atlanta Mayor Kasim Reed allows the protests to continue

- 21.** On 10 October 2011, Atlanta Mayor Kasim Reed spoke favorably of Occupy Atlanta. Thereafter, Mayor Reed issued an executive order which stayed the enforcement of Atlanta City Code Section 110-60, governing the use of public parks at night. See **EXHIBIT A**.
- 22.** This executive order served the function of a permit that allowed the protesters to remain in Woodruff Park and to continue their political assembly without fear of police intervention.
- 23.** On 17 October 2011, Mayor Reed extended the executive order and stated that the Occupy Atlanta protesters could remain in Woodruff Park until 7 November 2011. See **EXHIBIT B**.
- 24.** This executive order did not include any specific terms limiting its revocation, and did not confine the Mayor's judgment or discretion to revoke the executive order.

25. In spite of the condonation of the protests by the Mayor, City of Atlanta police maintained a presence surrounding the Occupy Atlanta movement. Nevertheless, prior to the mass arrests of Occupy Atlanta protesters, no person associated with Occupy Atlanta was arrested for disorderly conduct or any other violation related to the peaceful political protests taking place in Woodruff Park.

Arrests in Woodruff Park

26. On 25 October 2011, City of Atlanta police announced their intention to arrest any person who remained in Woodruff Park past 11:00 p.m. See **EXHIBIT C**.

27. To prepare for the arrests, City police erected barricades around the perimeter of Woodruff Park. Between 200 and 300 uniformed Atlanta police officers were involved in the effort to evict all individuals from Woodruff Park. See **EXHIBIT D**.

28. Police arrived in riot gear and on horseback. Police helicopters circled the Park.

29. Police arrested approximately fifty-two peaceful individuals. Additionally, police removed all personal possessions of the protesters and threatened to arrest any individual who re-entered Woodruff Park.

30. Woodruff Park remained closed, surrounded by barricades and a heavy police

presence, through Thursday, October 27.

31. All Occupy Atlanta protesters who were arrested on October 26 were charged under City Code Section 110-60.
32. The Occupy Atlanta protesters were not charged with violating any other law of the State of Georgia of City of Atlanta by peacefully assembling in Woodruff Park.

The City Code

33. The City Code (“the code”) creates three classes of permits governing gatherings of individuals: large gathering permits; festival permits; and assembly permits.
34. 142-103 defines “large gathering” as one of more than 75 people that does not meet the definition of “outdoor festival nor assembly.” See EXHIBIT D.
35. No permit is required for a gathering of less than 75 people. Sec. 142-101(a) states “[a]n outdoor event occurring on public property, with an expected attendance of fewer than 75 people, and that is not an assembly, does not require an outdoor event permit, and no outdoor event application need be filed.” See **EXHIBIT E**.
36. The Occupy Atlanta protests overnight have not consisted of more than 75 people.

37. At the time of the Occupy Atlanta arrests, fewer than 75 people remained in Woodruff Park.
38. Section 110-60(a) of the code prohibits any person from occupying a public park from the hours of 11:00 p.m. until 6:00 a.m. Section 110-60(a) excepts situations where “if the person has a festival or assembly permit for consecutive days and is performing duties not possible during the normal festival or assembly hours.” See **EXHIBIT F**.
39. In spite of exempting festivals and assemblies, Section 110-60(a) does not create an exception for any type of “gathering,” including groups such as Occupy Atlanta whose small size obviates the need for a permit.
40. Section 110-60(a) creates a scheme whereby large groups are allowed to occupy a public park after the hours of 11:00 p.m., but only where those assemblies qualify for and obtain either a “festival” permit or an “assembly” permit for consecutive days.
41. Under Section 142-81(a), Occupy Atlanta is a small gathering which cannot qualify for any type of permit and does not require any type of permit because an “assembly” is defined as involving more than 75 people and a “festival” involves more than 250 people. See **EXHIBIT G**.
42. Because Occupy Atlanta cannot qualify for an assembly permit, it is

impossible for its members to remain in Woodruff Park overnight, in spite of the fact that a festival or assembly would be allowed to remain overnight.

Plans for future protests

43. Occupy Atlanta has announced, and communicated to the City, its intention to resume protests in Woodruff Park on 5 November 2011. See **EXHIBIT H**.

Count I

Violation of 42 U.S.C. § 1983

Section 110-60 is an invalid content-based restriction

44. Section 110-60 is content-based because it targets political speech.
45. Section 110-60 allows for public parks to be occupied by “festivals” and “assemblies” but fails to allow for the use of the forum by small or political gatherings.
46. By failing to exempt individual people as well as small gatherings, and by failing to provide a permit scheme for such groups to use public parks overnight, Section 110-60 prohibits political protest, peaceful political and social assembly. Section 110-60 allows festivals and other commercially-driven groups to occupy public parks at night but completely bars such opportunities to political groups such as Occupy Atlanta.
47. Section 110-60 is not narrowly tailored because it enacts an outright ban on individuals and small political gatherings remaining in a public park after 11

p.m.

- 48.** There is no government interest served by a blanket prohibition groups and individuals from occupying a public park after 11:00 p.m., especially where those groups are prohibited from even seeking a permit to assemble on the public property and present less government concerns than larger groups already allowed to seek overnight permits.

Count II

Violation of 42 U.S.C. § 1983

Section 110-60 is an impermissible time, place, and manner restriction

- 49.** Plaintiffs incorporate all previous allegations as if set forth herein.
- 50.** Section 110-60 bans speech in a public park, and constitutes a ban on protected speech in a public forum.
- 51.** Section 110-60 is not content-neutral because it targets political speech.
- 52.** Section 110-60 is not narrowly tailored to the City's goal of maintaining public parks because it bans all protected speech and conduct in a public forum during certain periods of each day.
- 53.** Section 110-60 does not leave open alternative channels of communication or assembly between the hours of 11:00 p.m. and 6:00 a.m.

Count III

Violation of 42 U.S.C. § 1983

Section 110-60 is unconstitutionally overbroad

54. Plaintiffs incorporate all previous allegations as if set forth herein.
55. Section 110-60 is unconstitutionally overbroad because it bans any single person, and small political groups, from entering a public park after 11:00 p.m.
56. Section 110-60 bans all protected speech and conduct within any public park between the hours 11:00 p.m. and 6:00 a.m.
57. Section 110-60 targets substantially more speech than necessary to advance any City goal.

Count IV

Violation of 42 U.S.C. § 1983

Mayor Reed arbitrarily revoked permission to continue Occupy Atlanta

58. Plaintiffs incorporate all previous allegations as if set forth herein.
59. The executive order issued by Mayor Reed on 17 October 2011 granted Occupy Atlanta permission to remain in Woodruff Park until 7 November 2011.
60. This executive order constituted a permit to engage in constitutionally protected speech.
61. If a permit to engage in protected speech is issued, it cannot be revoked unless the discretion of city officials is controlled by defined standards.
62. Mayor Reed's decision to revoke Occupy Atlanta's previously-granted permission to remain in Woodruff Park was the product of arbitrary decision

making and was not confined by adequate standards or any written standards at all.

V. REQUEST FOR RELIEF

63. Plaintiffs request this Court declare that Section 110-60 is unconstitutional under the First Amendment of the United States Constitution.
64. Plaintiffs request this Court find the revocation of Mayor Reed's permission to operate was the product of arbitrary and unconstitutional decision-making and issue a mandatory injunction allowing Occupy Atlanta to remain in Woodruff Park for a period commensurate with the original executive order.
65. Plaintiffs request injunctive relief against the continued enforcement of Section 110-60's prohibition on the members of Occupy Atlanta remaining in Woodruff Park.
66. Plaintiffs request issue a temporary restraining order and permanent injunction against the enforcement of Section 110-60 and allow Occupy Atlanta to remain in Woodruff Park until the constitutional infirmities of the City's code are remedied.
67. Plaintiffs request an award of attorneys' fees to the extent recoverable.
68. Plaintiffs request that, on any issues so triable, there by a trial by jury.

Respectfully submitted this 4th day of November, 2011.

/s/ Jeffrey R. Filipovits
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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with Local Rule 5.1(B) in Times New Roman 14-point typeface.

Respectfully submitted this 4th day of November, 2011.

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VERIFICATION

Verification by Plaintiff Joe Beasley has been attached as EXHIBIT I.