

MILLER, MILLER & TUCKER, P.A.

Attorneys for Plaintiffs

<p>PEOPLE'S ORGANIZATION FOR PROGRESS and MARY WEAVER,</p> <p>Plaintiffs</p> <p>vs.</p> <p>CITY OF EAST ORANGE,</p> <p>Defendants</p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY</p> <p>DOCKET NO. ESX-C-211-02</p> <p>CIVIL ACTION</p> <p>VERIFIED COMPLAINT</p>
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INTRODUCTION

1. This action is a challenge to defendant's policy of requiring groups and individuals who wish to engage in free speech activity in traditional public forums, such as demonstrations, marches, or rallies, to execute a hold harmless agreement in favor of the City of East Orange.

2. This policy of extracting a hold harmless agreement prior to allowing free speech activity places a heavy burden on the constitutionally protected free speech rights of plaintiffs and could chill the speech of plaintiffs, as well as others not before this Court.

3. Plaintiffs challenge defendant's policy as violative of the First Amendment to the United States Constitution and of Article I, paragraphs 6 and 18 of the New Jersey Constitution.

PARTIES

4. Plaintiff People's Organization for Progress (“POP”), is a grassroots organization which works for racial, social and economic justice, which was organized in 1983 and is not incorporated.

5. POP has over 300 members, most of whom are New Jersey residents.

6. In furtherance of its goals of racial and social justice, POP has held numerous demonstrations, marches, and rallies, and intends to continue to engage in such activities in East Orange and elsewhere.

7. Plaintiff Mary Weaver is an active member of POP and a frequent participant in POP sponsored events.

8. Mary Weaver is also the mother of Randy Weaver, who was shot and killed by East Orange police in 1999.

9. Mary Weaver has held public memorial events in East Orange for her son and would like to do so again in the future.

10. Defendant City of East Orange is a municipality in Essex County, New Jersey, which requires that groups and individuals wishing to engage in free speech activity, such as demonstrations, marches, and rallies, must execute a hold harmless agreement before being allowed to do so. In the past, defendants have required that plaintiffs execute a hold harmless agreement prior to being allowed to engage in expressive activity.

JURISDICTION AND VENUE

11. Jurisdiction is appropriate in this Court pursuant to R: 4:3-1(a)(1) and 42 U.S.C. §1983 et seq. Venue is proper in Essex County pursuant to R: 4:3-2(a)(2).

SUBSTANTIVE ALLEGATIONS

12. It is the policy of defendant East Orange to require all applicants applying for a permit to engage in free speech activities such as demonstrations, marches, and rallies to execute a hold harmless agreement in favor of East Orange as a condition of obtaining a permit.

13. Defendant requires that the hold harmless agreement contain the following language:

This agreement made and entered into this [Day Month Year] by and between [Name of Organization] and the City of East Orange, a Municipal Corporation of the State of New Jersey.

The undersigned hereby agrees to protect, defend, indemnify and hold harmless the City of East Orange and its employees, agents, representatives or assigns against liability for any and all claims, for any and all causes of action or lawsuits brought by anyone directly or indirectly associated with the [Name of Event] of [Name of Organization] located at [Address] or employed by [Name of Event].

14. Defendant's policy also requires that the hold harmless agreement be prepared on the letterhead of the organization holding the event, be signed by an authorized agent of the organization, and be notarized. Defendant's policy applies to all applicants, even when the applicant intends to speak in a traditional or

dedicated public forum. Defendant's policy applies to all applicants regardless of whether there is any evidence that a speaker's activity will pose any danger of injury or property damage.

15. Defendant's policy directly burdens plaintiffs' ability to engage in free speech. POP and Mary Weaver are planning to hold a march on July 16, 2002 from Orange to Newark. Plaintiffs intend the march to pass through the cities of Orange, East Orange, Newark, and Irvington. The main purpose of the march is to memorialize specific people whom plaintiffs consider victims of police violence, including Randy Weaver.

16. Plaintiffs have investigated the possibility of obtaining insurance to cover the legal liability they would incur as a result of executing a hold harmless agreement in favor of the defendant and believe it would cost at least \$1,000.00. Plaintiffs do not have the resources to cover such a large expense.

COUNT I

(First Amendment Violations)

17. Plaintiffs incorporate the averments of paragraphs 1-16 as if fully set forth here.

18. Both as applied to plaintiffs and on its face, defendant's hold-harmless policy is an unconstitutional prior restraint and is unconstitutionally overbroad in that it imposes economic liability and costs on a substantial amount of expressive activity that is protected by the First Amendment of the United States Constitution.

19. As a result of the application of defendant's hold-harmless policy, plaintiffs have suffered, and will continue to suffer, irreparable injury, in that they have been, and will continue to be, deprived of their rights of free expression as guaranteed by the First Amendment to the United States Constitution, and have been, and will continue to be, "chilled" or discouraged in the exercise of those rights, in violation of 42 U.S.C. §1983 et seq.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant as follows:

A. A declaratory judgment that the defendant's hold-harmless policy is unconstitutional and invalid on its face, and/or as applied to plaintiffs.

B. Preliminarily and permanently enjoining the defendant from enforcing said policy.

C. For defendant to pay plaintiffs' costs, attorney's fees and other appropriate relief.

COUNT II

(State Constitutional Violations)

20. Plaintiffs incorporate the averments of paragraphs 1-19 as if fully set forth here.

21. Both on its face and as applied to plaintiffs, and for the reasons set forth above, the provisions of defendant's policy violate rights of speech and association guaranteed by Article I, paragraphs 6 and 18 of the New Jersey Constitution.

22. As a proximate result of the application of this ordinance, plaintiffs have been, and will continue to be, deprived of their rights under the Article I State Constitution paragraphs 6 and 18.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant as follows:

A. A declaratory judgment that the defendant's hold-harmless policy is unconstitutional and invalid on its face, and/or as applied to plaintiffs.

B. Preliminarily and permanently enjoining the defendant from enforcing said policy.

C. For defendant to pay plaintiffs' costs, attorney's fees and other appropriate relief.

MILLER, MILLER & TUCKER, P.A.

Dated: June 25, 2002

By: _____
LYNN F. MILLER, ESQ., for the firm
Miller, Miller & Tucker, P.A.
Cooperating Attorneys with the ACLU of NJ

DESIGNATION OF TRIAL COUNSEL

Pursuant to Court Rule, Plaintiffs hereby name Arthur H. Miller, Esq. as designated trial counsel.

MILLER, MILLER & TUCKER, P.A.

Dated: June 25, 2002

By: _____
LYNN F. MILLER, ESQ., for the firm
Miller, Miller & Tucker, P.A.
Cooperating Attorneys with the ACLU of NJ

CERTIFICATION OF VERIFICATION AND NON-COLLUSION

LAWRENCE HAMM, being of full age, certifies that:

1. I am the President of the People's Organization for Progress, a plaintiff in the foregoing Complaint to which this is annexed.
2. The allegations of the Complaint are true to the best of my knowledge and belief. The Complaint is made in truth and good faith and without collusion for the causes set forth therein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

LAWRENCE HAMM, President,
People's Organization for Progress

CERTIFICATION OF VERIFICATION AND NON-COLLUSION

MARY WEAVER, being of full age, certifies that:

1. I am a plaintiff in the foregoing Complaint to which this is annexed.
2. The allegations of the Complaint are true to the best of my knowledge and belief. The Complaint is made in truth and good faith and without collusion for the causes set forth therein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

MARY WEAVER