

Activist Organizations File Suit Against Local Officials Over FTAA-Related Arrests

“Most everyone who was arrested was there to speak out against government, and when they should have received the maximum amount of protection granted by First Amendment rights, they received the least.”-- Robert Ross, attorney affiliated with MAD

By Mitchell Pellecchia
Staff Writer
April 4, 2004

Just as the Miami City Commission rolled back its protest ordinance enacted prior to the November Free Trade Area of the Americas (FTAA) summit in Miami, a lawsuit was filed against the city, the state and the federal government for violating the constitutional rights of activists.

In a unanimous decision by city commissioners at their March 25 meeting, city officials repealed the four-month-old ordinance entitled “Streets and Sidewalks” that governed the conduct of demonstrations and parades in Miami, banned certain items such as glass bottles, water balloons and water guns, and imposed on protesters what activist groups considered unreasonable time and place restrictions.

That same day, the Miami Activist Defense (MAD) and the National Lawyers Guild (NLG) filed a lawsuit in a Florida United States District Court naming 21 plaintiffs, and eight defendants including but not limited to: Miami Police Chief John Timoney, Miami Mayor Manny Diaz, State Attorney Katherine Fernandez-Rundle, Miami-Dade County Mayor Alex Pinelas, Department of Homeland Security Secretary Tom Ridge and U.S. Attorney General John Ashcroft.

The lawsuit outlines “how these entities and others engaged in an orchestrated plan to arrest people on baseless charges and to hold them in preventive detention thereby prohibiting First Amendment activity and violating the Fifth Amendment right to due process.”

“This lawsuit blows open the unlawful way in which police profiled and targeted activists and people who were in Miami to protest the FTAA,” said NLG attorney Carol Sobel. “Anyone who fit the police description of being anti-FTAA was subject to harassment, abuse, and unlawful arrest.”

Sobel’s position is that it is “absolutely clear” that the use of force was improper during the FTAA Ministerial and that the use of pepper spray by police at close range has been “unconstitutional” for years. Many defendants claim to have been sprayed repeatedly by police in their eyes, ears, nose and mouth. According to the lawsuit, all the plaintiffs claim they were falsely arrested and are demanding a jury trial.

According to MAD attorney Robert Ross, the state attorney’s office knows there was no probable cause for the arrests, but is still moving ahead with the prosecutions.

“We have requested many times that they stop prosecuting arrests, but they have not responded to our requests. They literally have convicted no one,” Ross said.

According to the state attorney’s communications director Ed Griffith, Fernandez-Rundle’s office cannot comment officially on the lawsuit because they have yet to be served. Sobel said it was necessary to include Fernandez-Rundle in the lawsuit.

“In order to stop the prosecution of these laws, the state attorney is listed as a defendant,” Sobel said.

Miami City Attorney Alejandro Vilarello also said his office had no comment because as far as they’re concerned, they cannot address the lawsuit against the mayor until he is served.

“He’s in no hurry to find out he’s being sued,” Vilarello said.

According to Vilarello, replacing the old ordinance with simpler time, place and manner restrictions “cleans up the constitutionality problems Judge Graham had with the old ordinance.”

On February 5, Federal Court Judge Donald Graham slapped a temporary restraining order on the City of Miami protest ordinance, preventing the city from further enforcing it and allowing city officials 30 days to change its language. The revised ordinance, passed on March 25, no longer restricts speech protected under the constitution.

“Most everyone who was arrested was there to speak out against government, and when they should have received the maximum amount of protection granted by First Amendment rights, they received the least,” Ross said.

Of the 21 plaintiffs only four are Florida residents. Others hail from California, Colorado, New Hampshire, Washington D.C., Massachusetts, New Jersey, Michigan, Illinois, New York and Wisconsin. Occupations include college professors and elementary school teachers, students, war veterans and activists. The lawsuit is very descriptive as to under what condition each plaintiff was arrested, and specific as to what law enforcement violations were committed.

“Demonstrators came from all over the country to speak out about the socioeconomic impact Free Trade would have on their families and their livelihood,” Sobel said.

The plaintiffs are demanding injunctive relief – that all the charges pending against them be dropped, as well as reparations for physical injuries and punitive damages. According to Ross, punitive damages are still undetermined, but he said similar cases in L.A. have resulted in awards of up to \$6 million.

Critics within the City of Miami contend activist lawsuits such as the MAD suit are usually filed for the sole purpose of generating a revenue stream so activist organizations can keep their financial head above water. They usually attack a laundry list of defendants with the hope that at least one will settle.

According to Sobel, most similar cases have been settled out of court.

“Only one or two cases that I know of have gone to a jury trial,” Sobel said.