

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, CRIMINAL DIVISION

CITY OF CHICAGO,

Plaintiff,

vs.

Defendant.

No.

FILED

NOV 07 2011

CLERK OF CIRCUIT COURT

MOTION TO DISMISS

Defendants, participants in the social movement **OCCUPY CHICAGO**, move to dismiss the charges against them on the grounds that these charges violate the defendants' rights under the First Amendment to the United States Constitution to freedom of speech, to assemble, and to petition the government for redress of grievances. In support of this motion, defendants state:

1. The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. The First Amendment binds municipalities such as the City of Chicago, and forbids them from abridging freedom of speech, and preventing the people from peaceably assembling and petitioning the Government for redress of grievances.

3. **OCCUPY CHICAGO** is a grass roots political movement which has organized itself to represent the 99% of the population who have not profited from the corporate abuses which have infected this country for several years.

4. **OCCUPY CHICAGO** has set forth broad political goals. Its mission statement

states:

We are Chicagoans, and most importantly, Americans, gathered together in solidarity to exercise our Constitution-guaranteed rights of free speech and to peacefully assemble.

We welcome support from our sisters and brothers across the nation and the world. "Occupy Chicago is here to fight corporate abuse of American democracy in solidarity with our brothers and sisters around the world."

Declaration of Nonviolence

"Occupy Chicago reassures its members and the public that we are a social movement dedicated to nonviolent action."

<http://occupychi.org/about-us> (accessed November 4, 2011)

5. **OCCUPY CHICAGO** is part of a broader political and social movement which is based on outrage about the manner in which the richest and most powerful 1% of our society have seized for themselves an ever-increasing share of what should be our common wealth. The movement has as its rallying cry, "We are the 99%."

The term, "We are the 99%" is a political slogan, Internet meme and implicit economic claim used by demonstrators involved in the "Occupy" protests. It is intended as a statement of a trend, since the 1970s, for wealth and income to become concentrated within the top 1% of the United States population. According to the Congressional Budget Office, between 1979 and 2007, incomes of the top 1% of Americans have grown by an average of 275%, versus just 40% for the 60 percent of Americans who are in the middle of the income scale. The top 1% of the American population controls about 40% of total wealth in the country and the top 10% controls 73%. Since 1979, average pre-tax income for the bottom 90% of households decreased by \$900, and that of the top 1% increased by over \$700,000, as federal taxation became less progressive. While over the last 30 years, the top 1% has borne a larger percentage of the tax burden, up from 15% in 1979 to to 37% in the year 2009, the 400 taxpayers with the highest incomes saw their income increase by 392%. The average income of the 1% was \$960,000 in 2009 with a minimum income of \$343,927.

[http://en.wikipedia.org/wiki/Occupy\\_Wall\\_Street#We\\_are\\_the\\_99.25](http://en.wikipedia.org/wiki/Occupy_Wall_Street#We_are_the_99.25) (accessed November 4, 2011) (footnotes omitted).

6. An integral part of the **OCCUPY** movement is the continuous occupation of a

physical location in the vicinity of the workplaces of the 1%. The occupation itself is part of the expressive act, in that it is intended to bring public outrage to bear on the excesses of the 1% while the 99% are faced with unemployment, poverty, cuts in social services, unaffordable health care and a raft of other social ills. The occupation is not just a demonstration; it is an expression of the participants' willingness to undergo physical discomfort and to contribute their bodies to the struggle, in an effort to bring attention to bear on the scandalous state of our country's current economic system.

7. Additionally, an occupation, as opposed to a march or demonstration, has the ability to reach more people with its message because of its stationary location maintained over an extended period of time which provides participants a greater ability to communicate their message and attract additional supporters to their cause.

8. Various participants in Occupy Chicago have continually stated that the occupation itself is a statement, and constitutes opposition to the current social and economic situation in this country. As one participant wrote in the Chicago Tribune:

**Why I occupy**

I occupy because corporations are not people, and money is not the same thing as free speech.

I occupy because I believe in united citizens, not Citizens United.

I occupy because our military is spending billions of dollars to occupy foreign countries while jobs, infrastructure and the economy suffer at home.

I occupy because my generation should have opposed these wars in greater numbers and with greater outrage to start with.

I occupy because I am tired of going to the polls and trying to decide which politician is least likely to attempt to sell a Senate seat to the highest bidder.

I occupy because I am tired of seeing executives of failed companies receiving bonuses while their employees are laid off without severance.

I occupy because I believe in the First Amendment and the civil liberties it grants us.

I occupy because the system is not broken but relies on this kind of active participation to remain strong.

I occupy because it is exciting to see democracy working.

I occupy because after seven years combined of undergraduate and graduate studies, I have student loan debt but not the gainful employment necessary to pay it down.

I occupy because I have been underemployed since finishing school, often working two or three part-time jobs to try to make ends meet.

I occupy because I have spent half of this year unemployed altogether, through no fault of my own. I occupy because the unemployed cannot afford to be invisible statistics any longer.

I occupy because the alternative is sitting in my parents' basement writing cover letters that won't even be rejected, just ignored.

I occupy because if it weren't for the safety net my parents have provided, I would be sitting on a street corner all day asking for a different kind of change.

I occupy because my dreams have been deferred, and it was only a matter of time before they would explode.

<http://www.chicagotribune.com/news/opinion/ct-vp-1030voicelettersbriefs-20111030-17,0,7568817.story> (Accessed November 4, 2011).

9. In accordance with these expressions of political opinion, the **OCCUPY CHICAGO** movement established a physical presence outside the Federal Reserve Bank, 230 S. LaSalle, Chicago, Illinois, on or about September 22, 2011.

10. Since that time, **OCCUPY CHICAGO** has maintained that presence, but has been constantly faced with harassment from the City of Chicago, which has refused to allow it to express its political viewpoints through the mechanism of an occupation.

11. This harassment has been on-going, and has been authorized at the highest levels of the City government, and in particular by Mayor Rahm Emanuel and Police Superintendent Garry McCarthy.

12. In accordance with this harassment and refusal to allow participants in **OCCUPY CHICAGO** to express their political views, police officers have been ordered to prevent

participants from having a continuous physical presence outside the Federal Reserve Bank. In particular, on day 12 of the occupation, a participant noted:

Around 2am this morning there was an issue with the cops and us needing to make immediate action to make all things there 100% mobile, all bodies must be constantly moving, and absolutely no sitting/sleeping. This resulted in a 3am emergency assembly to discuss how we were going to address this and the long term necessity of an HQ where people can actually camp and stuff can remain setup.

<http://occupychi.org/home?page=6> (Accessed November 4, 2011).

13. Subsequently, on day 14, a participant reported:

Late Monday night, members of the CPD were ordered to crackdown on Occupy Chicago for non-compliance regarding issues of storage of supplies and donations and lack of mobility. This crackdown greatly challenged the ability of Occupy Chicago to maintain functionality, community support, and individual participation. For the first time, CPD warned that non-compliance would lead to citations and arrests. It seems clear that the severity of this crackdown, given the mutual level of respect and cooperation between CPD and Occupy Chicago, was not an action taken directly by the CPD, but instead orders from above.

<http://occupychi.org/2011/10/06/phase-ii-mobilization>

14. **OCCUPY CHICAGO** recognized that as part of its expressive activity and ability to petition for redress of grievances, it needed to find a location where participants could occupy and not need to continually move. In accordance with this recognition, **OCCUPY CHICAGO** sought to communicate with the City of Chicago in an attempt to locate an area where the occupation could continue, and where the participants would not continually be forced to move, at all hours of the night.

15. The City of Chicago has refused to meaningfully negotiate with **OCCUPY CHICAGO** concerning its demand for a physical location in the area of downtown Chicago for

the occupation, and has refused to make any efforts to permit **OCCUPY CHICAGO** to exercise its First Amendment Right to occupy a space as a form of political expression and speech.

16. On the evening of October 15-16, **OCCUPY CHICAGO** determined to exercise its First Amendment rights to freedom of speech, to peaceably assemble and to petition for a redress of grievances by occupying a location in Grant park, on the northeast corner of Michigan Avenue and Congress Parkway, and setting up tents to show that participants intended to occupy that area as part of their political expression.

17. **OCCUPY CHICAGO** informed the City of Chicago and the Chicago Police Department of their intention prior to occupying this area, and informed the City and the police department that this occupation was part of their political expression.

18. **OCCUPY CHICAGO** did then peaceably occupy this area. The occupation did not disrupt pedestrian or vehicular traffic, and was in a public area and positioned so it would not prevent anyone from passing freely on the street or sidewalk or from using the park space.

19. Despite the fact that the participants were assembling in this area to peacefully express their political views and to express their grievances, the City of Chicago, through its police department and at the express direction of the Mayor, arrested the participants in the occupation, destroyed their tents and other belongings, and charged the defendants with violation of a Chicago Park District ordinance which provides that persons should not be in the park after 11:00 p.m.

20. The defendants who bring this motion were some of the participants in this occupation, and were participating in **OCCUPY CHICAGO** and in this occupation in order to

express their political views and to petition for redress of their grievances.

21. Because the City of Chicago had refused to provide the participants in **OCCUPY CHICAGO** with an adequate forum in which to express their political views and petition for redress of grievances, arresting these defendants and charging them with violation of the Chicago Park District ordinance violated their rights under the First Amendment to the United States Constitution.

22. Additionally, the arrest of the participants in the **OCCUPY CHICAGO** occupation violated their rights under the Equal Protection clause of the Fourteenth Amendment in that Chicago police do not routinely arrest persons who are in the park after 11 p.m. but rather either ignore that these persons are in the park, or at the most write citation tickets.

23. The United States Supreme Court long ago recognized that members of the public retain strong free speech rights when they venture into parks, "which 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983) (quoting *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939) (opinion of Roberts, J.)).

24. The First Amendment to the United States Constitution protects expression and the ability to assemble and petition for the redress of grievances against governmental interference and restraint. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975). Extremely broad protection is afforded to political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354

U.S. 476, 484 (1957). In fact, “there is practically universal agreement that a major purpose of the [First] Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Moreover, the First Amendment reflects the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

25. While the Occupy movement has substantial public support, even if it did not, it would nevertheless be protected under the First Amendment, since advocacy of politically controversial viewpoints is the essence of First Amendment expression. See, e.g. *Citizens United v. Fed. Election Comm’n*, \_\_\_ U.S. \_\_\_. 130 S.Ct. 876, 892 (2010) (holding that political speech is “central to the meaning and purpose of the First Amendment”); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995). Efforts by governmental agencies to burden core political speech are weighed with “exacting scrutiny” and may be upheld only if narrowly tailored to serve an overriding state interest. *McIntyre*, 514 U.S. 334, 337.

26. Moreover, preventing First Amendment activities before they pose a clear and present danger is a First Amendment violation. *Carroll v. President and Com’rs of Princess Anne*, 393 U.S. 175, 180-81 (1968); Laurence Tribe, *American Constitutional Law* § 12-34, at 1041 (2d. ed. 1987).

27. The only clear and present danger which the **OCCUPY CHICAGO** occupation posed was to the illicit conduct of the 1% and their determination to continue and increase their control of our country’s resources, which should be equitably divided.

28. The arrests and charging of the defendants in this case also violated the First

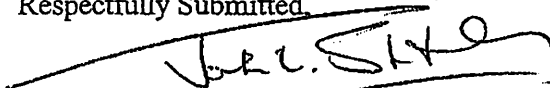


Amendment prohibition on content-based discrimination, since it was the strong political message of the participants in OCCUPY CHICAGO, and in particular their determination to engage in an occupation as political speech, which was a substantial factor in the City arresting and charging these defendants.

Wherefore, because the arrests and charging of these defendants violated their rights under the First Amendment to the United States Constitution, the charges should be immediately dismissed.

Dated: November 4, 2011

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John L. Stainthorp", is written over a horizontal line.

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\*Paralegal Brad Thomson from People's Law Office participated in the formulation of this motion.