



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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*For Immediate Release*

## FEDERAL APPEALS COURT AFFIRMS CITY'S SIGNIFICANT WIN IN REPUBLICAN NATIONAL CONVENTION CASE

***COURT FINDS THAT RESTRICTIONS ON PROTESTING ACTIVITY WERE REASONABLE IN LIGHT OF  
COMPELLING SECURITY INTEREST DURING THE 2004 CONVENTION***

Contact: Kate O'Brien Ahlers / Elizabeth Thomas, (212) 788-0400, [media@law.nyc.gov](mailto:media@law.nyc.gov)

New York, August 3, 2012 – The Second Circuit Court of Appeals has affirmed the City's win in a case upholding the merits of arrests made during the 2004 Republican National Convention (RNC). The Court's ruling yesterday in *Marcavage v. City of New York* is significant because it upholds the Police Department's authority to make determinations that balance the safety of demonstrators, commuters, residents, and businesses in policing major events such as the RNC.

The lawsuit was brought by two protestors, Michael Marcavage and Steven Lefemine, who were arrested across from Madison Square Garden in the vicinity of 32<sup>nd</sup> Street and Seventh Avenue after they refused to comply with orders to leave the immediate area and continue their demonstrations in a nearby zone that had been set up to accommodate such activity. Before their arrests, the plaintiffs refused 17 requests by three police officers to move from a designated "no-demonstration" zone, arguing that they did not want to be located next to other protestors. Their lawsuit alleges that they were denied the right to free speech and that their arrests were unconstitutional.

However, the Second Circuit – affirming an October 2010 decision by the U.S. District Court for the Southern District – found that the demonstration area set up by the City provided ample opportunity for protestors to express their views, that the City's demonstration policy complied with the First Amendment, and that the plaintiffs' arrests were proper.

"The stretch of Seventh Avenue in front of the Garden is a crowded thoroughfare even without major sports or political events at the Garden, with commuters, shoppers, tourists, residents, and other people passing through," the Court's decision notes. "... The police had to design measures to cope with a security challenge that was altogether extraordinary."

"The ruling recognizes the extraordinary challenges the NYPD faced in effectively policing a massive event in a venue like New York City, with its millions of residents, visitors, and workers," said Senior Counsel Drake A. Colley of the New York City Law Department. "Two federal courts have now agreed that the police appropriately balanced the safety and the Constitutional rights of both demonstrators and non-demonstrators alike during the Convention."

When the District Court ruled in *Marcavage* in October 2010, it was the first legal decision addressing the merits of the arrests made during the event. The Law Department is currently handling over 50 pending cases by more than 450 individual plaintiffs, as well as a class action related to the RNC.

Drake A. Colley, a senior counsel in the Appeals Division of the Law Department, argued the appeal in *Marcavage*. Peter Farrell, a senior counsel in the Special Federal Litigation Division, and Executive Assistant Corporation Counsel for Public Safety Celeste Koeleveld have overseen the complex litigation arising from the RNC.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and one of the largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 80,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 650 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit [nyc.gov/law](http://nyc.gov/law).

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