



NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

**U.S. DISTRICT COURT DENIES REQUEST OF POLICE AND OTHER SERVICE
UNIONS' FOR TEMPORARY RESTRAINING ORDER
REGARDING DEMONSTRATION TACTICS, THEREBY PRESERVING
THE NYPD'S ABILITY TO PROTECT PUBLIC SAFETY**

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New York, August 25, 2004 – United States District Judge Gerard E. Lynch of the United States District Court for the Southern District of New York today denied the request of several unions, led by the Patrolmen's Benevolent Association (PBA), for a temporary restraining order restricting the New York Police Department's (NYPD's) discretion in policing demonstrations and providing security to the Mayor and other public figures.

"The City is pleased with this decision, because it recognizes that the City is properly allowing protestors – be they police or any other protestors – to demonstrate, but within certain limits that ensures the safety of others and also complies with the Constitution. The Court accepted the importance of allowing that policing at demonstrations complies with the Constitution, and accepts the importance of allowing the Police Department freedom to make critical security determinations, whether the question is providing for the protection of the mayor or the safety of demonstrators or members of the public at large events," said Corporation Counsel Michael A. Cardozo. "Off-duty police officers have the same rights as every other New Yorker, no more and no less."

The litigation, which had been threatened for several weeks, was formally filed this morning in U.S. District Court, and resulted in an emergency hearing before Judge Lynch this afternoon. In their legal papers, the unions asked the Court for immediate and extraordinary relief that would have restricted the conduct of the NYPD at demonstrations before, during and after the coming Republican National Convention, arguing that they would be irreparably harmed if restrictions were not immediately placed on the NYPD.

Contending that the NYPD's handling of demonstrations by any group is geared towards balancing the needs of free speech and public safety, attorneys for the City pointed out that the NYPD already handles demonstrations to allow for reasonable access by protesters to protest locations within sight and sound of their targets. Particularly, the City argued that the unions' request that police be restricted to maintaining a 15-foot zone of safety around the Mayor and then allow up to ten protesters within that zone was patently unreasonable, and ignored the need of the NYPD to tailor security arrangements to individual circumstances as well as changing threats and conditions. In addition, the City argued that the judge should not grant special treatment to police and firefighters seeking to demonstrate, and that these unions should be treated by the same standard by which the NYPD polices all protests and major events.

Following a two-hour oral argument, the Court, without requiring the City to file response papers, summarily denied each of the unions' requests, concluding that the unions had failed to show a likelihood of success on their claims that the restrictions imposed by the NYPD violated the unions' Constitutional

rights. Focusing on the fact that the unions' complaints dealt with three unique demonstrations against a backdrop of over 20 other apparently untroubled protests over the last few weeks, the Court took the view that the unions had not shown evidence of any unconstitutional practices in the policing of demonstrations, and that the City already polices demonstrations in a Constitutionally appropriate way, noting that: "To order the City, in effect, to do what it says it's doing anyway would be unnecessary and excessive."

The Court also voiced agreement with the City on the importance of a need for flexibility on the part of the NYPD to determine the size of the "frozen zone" around the Mayor and other public figures based upon varying security concerns, acknowledged the need of the NYPD to use barriers to control crowds or maintain pedestrian, vehicular and emergency traffic at protests and events, and recognized the need to film potential threats of violence and/or document events for purposes of litigation prevention. In addition, the Court declined to grant, at this time, the unions' request that their application for a preliminary injunction be scheduled for a hearing.

The City's legal team on the case was headed by Special Counsel Gail Donoghue and included also Administrative Law Division Chief Gabriel Taussig, and Assistant Corporation Counsels Zachary A. Cunha, Mark W. Muschenheim and Alan H. Scheiner.

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