

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

School of Americas Watch, Roy Bourgeois,
Jeff Winder, Eric Lecompte and Becky Johnson
Plaintiffs

versus

Civil Action Case Number 4:02_____

Consolidated Government of
Columbus, Georgia
Defendants

VERIFIED COMPLAINT

This action seeks declaratory relief, injunctive relief and damages in a challenge to sweeping plans by defendants to prohibit 10,000 plus people from exercising their First Amendment rights to peacefully assemble, speak, and petition the government in a public forum unless they each first submit to law enforcement searches without consent, without warrant, without probable cause and without individualized suspicion. Defendants plan to force every person to be subjected to metal detectors and if the detectors go off, to a more comprehensive search. Plaintiffs are part of 10,000 plus people planning to participate in the upcoming November 16th and 17th, 2002 School of Americas Watch demonstration. Defendants only recently notified representatives of School of Americas Watch that they unilaterally plan to put in place a law enforcement perimeter for the demonstration and require each person who wants to attend the demonstration to submit to be searched. Defendants have also indicated they plan to bar persons from engaging in free speech activities if they have in their possession certain, vaguely-defined, legal items. These last-minute restrictions, once again targeting SOA Watch infringe on the constitutionally protected free speech activity in a public forum of 10,000 plus people. The defendants actions are unnecessary, logistically impossible, will delay and deter legal protests and are patently unconstitutional.

JURISDICTION AND VENUE

1. This action arises under the authority vested in this Court by virtue of 42 U.S.C. 1983, 42 U.S.C. 1985, 28 U.S.C. 1331, 28 U.S.C. 1343 and 28 U.S.C. 1367 and pursuant to the United States Constitution and Georgia Constitution. Venue is proper in this Court.

PARTIES

2. Plaintiffs include an organization as well as organizers and participants in peaceful demonstrations in a public forum pursuant to a permit for November 16-17, 2002. School of Americas Watch (SOAW) is a national association that advocates for changes in the policies of the U.S. government, particularly to close the School of the Americas (SOA) and Western Hemisphere Institute for Security Cooperation (WHISC). Roy Bourgeois is a resident of Columbus Georgia and has been actively engaged in SOAW and the annual protests in

Columbus Georgia for over 10 years. Jeff Winder and Eric Lecompte are staff members of SOAW and have been involved in the annual protests in Columbus Georgia for years. Becky Johnson is a member of SOAW and has been involved in the protests in Columbus Georgia for years.

3. Defendant, and the law enforcement agencies acting in concert with Defendant, monitor the demonstrations each year organized by SOA Watch and have issued a policy challenged herein.

FACTUAL ALLEGATIONS

4. For over ten years, thousands of citizens come to Columbus to peacefully pray, mourn and protest in the name of the suffering poor of Latin America. They have gathered at the main gate of Ft. Benning, calling for the closing of the School of the Americas, which has trained thousands of soldiers from Latin America. Plaintiffs argue that the SOA (now called the Western Hemisphere Institute for Security Cooperation) trains many foreign soldiers who return to their home countries and commit illegal killings, torture and disappear countless numbers of innocent people.

5. SOA Watch is an umbrella for thousands of concerned citizens, including college students, high school students, teachers, World War II, Vietnam and Gulf War veterans, senior citizens, parents and children, ministers, people of faith, students, and people in wheel-chairs. Their movement, made up of young and old, from all walks of life, is deeply rooted in nonviolence. In fact, at the beginning of each protest, the thousands of people attending the protest recite together a pledge of non-violence.

6. In their ten plus years of praying, mourning and protesting at Fort Benning's main gate, SOA Watch always maintained a respectful and peaceful presence. Violence has never been and will never be a part of their movement. They maintain this peaceful discipline with the assistance of 500 peacekeepers who are specially trained in the history and methods of nonviolence. Two dozen plus legal monitors also participate in ensuring that non-violent protest rights of all participants, neighbors, and local residents are respected.

7. Last year, on the eve of the gathering and funeral procession, with thousands of persons in transit to Columbus, the City of Columbus filed a last-minute request for an injunction prohibiting the legal protest within fifty (50) yards of the base. The Order denying said request is attached hereto as Exhibit A.

8. This year, the City of Columbus granted a permit for the demonstration.

9. On November 5, 2002, City of Columbus police officers delivered to Father Roy Bourgeois at his home an un-announced policy attached hereto as Exhibit B (hereinafter, first SOA Mass Search Policy). The first SOA Mass Search Policy anticipated creation of a secure law enforcement perimeter around the public protest area and mandatory pre-entry searches of all persons, bags, backpacks and other containers, without consent, without warrant, without probable cause, and without individualized suspicion, and empowers officers to deny entry to the protest area if any person possesses legal items in certain vague categories.

10. After a letter from SOAW was sent challenging the policy, defendants amended their policy attached hereto as Exhibit C (hereinafter current SOA Mass Search Policy) to exclude fewer legal items, but continued its intention to set up a secure perimeter and demand that every one of the 10,000 persons who wanted to attend the protest first be subjected to a search with a metal detector, again without consent, without warrant, without probable cause, and without

individualized suspicion. If the metal detector went off, then more invasive searches would occur.

11. Representatives of SOA Watch and the City of Columbus met face to face on November 12, 2002 but were not able to resolve this mandatory search requirement.

CLAIMS FOR RELIEF

UNITED STATES CONSTITUTION

12. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

13. The current SOA Mass Search Policy provides for a ring of law enforcement around the site of the public protest and mandatory searches of all persons who seek to exercise their free speech rights as a precondition to attending the public demonstration on public property.

14. The current SOA Mass Search Policy encourages and allows for mass searches by metal detectors of all 10,000 demonstrators without consent, without warrant, without probable cause, and without reasonable and individual suspicion to believe that the individual has committed any crime, plans to commit any crime, or possesses any illegal weapon.

15. Under the current SOA Mass Search Policy, law enforcement authorities have broad, vague, and unbridled discretion to deny access to the protest area if an officer finds in a mass search that an individual has a legal item that the officer concludes is covered by the vague listing of prohibited items.

16. Plaintiffs enjoy the First and Fourteenth Amendment rights to assemble in public forums such as the permit area for the upcoming SOA Watch protest. The actions of defendants will violate the constitutional rights of 10,000 plus people and create huge logistical problems with access in and out of the demonstration site.

17. Plaintiffs enjoy the First, Fourth and Fourteenth Amendment rights to assemble in public forums such as the permit area without being subjected to mass searches of their property or denied access based upon their possession of legal items. The actions of defendants will violate the constitutional rights of 10,000 plus people and create huge logistical problems with access in and out of the demonstration site.

GEORGIA CONSTITUTION

39. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

40. The Georgia Constitutional protections for free speech, assembly, due process, privacy and against unreasonable searches are even broader than those of their federal counterparts, and the SOA Mass Search Policy also violates Georgia Constitution Article I, section I, paragraphs II, III, IV, V, IX, XIII, and XXV.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;
2. Declare Defendants current SOA Mass Search Policy unconstitutional;
3. Enter a preliminary and permanent injunction against enforcement of Defendants current SOA Mass Search Policy by any person or entity within the scope of Federal Rule of Civil Procedure

65;

4. Enter judgment in Plaintiffs favor for nominal damages.
5. Award Plaintiffs reasonable attorneys fees and costs as allowed by law.
6. Order such additional relief as the Court may deem just and proper.

DATED this the ____ day of November, 2002.

Respectfully submitted,

Gerald Weber, Legal Director
(Georgia Bar No. 744878)
ACLU of Georgia
142 Mitchell Street, S.W.
Atlanta, Georgia 30303
(404) 523-6201
Attorney for Plaintiffs

William P. Quigley
Pro Hac Vice
7214 St. Charles Avenue
New Orleans, LA 70118
504-861-5590; fax 504-861-5440
Cell in Columbus 504-606-3073
Attorney for Plaintiffs

Please serve defendants

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Verification of Complaint

State of Georgia
County of _____

Affidavit of Fr. Roy Bourgeois in Support of Injunctive Relief

Before me, the undersigned authority, personally came and appeared:
Fr. Roy Bourgeois

Who, after being duly sworn, deposed and said:

I am a priest and I live in Columbus Georgia. I have read the complaint in this matter and every fact in it is true to the best of my knowledge.

I have been involved as an organizer of the protests of the School of the Americas (SOA) and Western Hemisphere Institute of Security Cooperation (WHISC) in Columbus Georgia for many, many years.

There has never been any incidents of violence at these protests. Indeed, non-violence is one of the core values of the protest and the people who attend.

The protest organizers include an extensive team of "peace keepers" who are experienced and trained to make sure that the protests goes smoothly.

The organizers expect upwards of ten thousand people to gather at the demonstration site on Saturday and Sunday, November 16 and 17, 2002.

Attempting to make each and every participant go through checkpoints with metal detector will impose serious logistical and participation problems on our protest. We have thousands of people coming from all over the nation and from many other countries to this demonstration. We ask them all to come to one single spot early on Sunday morning for a solemn funeral procession and demonstration. Trying to get 10,000 people past checkpoints with metal detectors will certainly take a long time and will disrupt our attempt to hold a demonstration.

Checkpoints that 10,000 people must pass by will certainly make people stand in long

lines waiting long periods of time to enter. This checkpoint system will also discourage people who leave the premises from returning. If the metal detectors beep, and we all know that they beep a lot, then people will have to remain longer and hold up the line while they empty out their pockets and/or backpacks and the like. There is also the problem of people entering and exiting the area because if people have to be searched when entering and then stand in line and searched again when they come back, it will be very likely that many people will decide not to come back in. Even if it takes less than a minute per person on average.

These checkpoints and searches are not necessary and will hurt our ability to conduct our demonstration.

We have never condoned violence and we have never had an episode of violence in the protest in all the years that we have held it. Each person involved in the protest is asked to recite a vow of non-violence. As a part of our annual event, we have each person at the protest recite the following pledge:

“Our goal is to expose and close the US Army's School of the Americas/WHISC.

We will act with full respect for our Latin American sisters and brothers, both living and dead.

We will use our anger at injustice as a Nonviolent force for change.

We will act with full respect for the diverse Nonviolent tradition that SOA Watch embodies.

Accordingly, at today's Vigil Action --

-- We will carry no weapons.

-- We will not vandalize.

-- We will not use or carry alcohol or illegal drugs.

-- We will not swear or use insulting language.

-- We will not run in public or otherwise make threatening motions.

-- We will not assault -- either verbally or physically -- those who oppose or disagree with us...even if they assault us. We will protect those who oppose us from insult or attack.

-- We will honor the emergency decisions of the empowered coordinators and spokes-council representatives.

-- Our attitude as conveyed through words, symbols and actions will be one of respect toward all -- including police officers, military personnel, members of the larger community, and all vigilers and members of the SOA Watch family.

-- If prosecuted we will use the judicial process to continue our resistance. Where possible, we will put the SOA itself on trial.

We know this Vigil is part of an ongoing, protracted campaign. We will return to our community and renew our work to close the SOA.”

It is not unreasonable to expect that on average it will take one minute per person to go through these checkpoints. If the metal detectors are like the ones in courthouses and airports then they will go off for belt buckles, watches, wallets, sunglasses, keys, cans of soda, ring binders, jewelry, and personal items. Individuals will either have to take all of these off before they go through the metal detectors and then put them back on (which will take some time) or they will have to remove them after the detector beeps and then they will have to remove these items and go through the process again (which will take even longer). That time does not even count the time for law enforcement people to open and search all the backpacks and bags that

people bring to an all-day protest (which will add several minutes each for the people whose bags set off the metal detectors).

If it takes an average of one minute per person per checkpoint, it will take 10,000 minutes to allow every protestor to enter the protest. If there are 4 entry checkpoints, it will take 41 hours to process 10,000 people. If there are 8 entry checkpoints it will take 20 hours, 10 hours if there are 16, and 5 hours if there are 32 entry checkpoints. And that does not count the impact of people leaving and coming back in. Incredible backlogs and long, long lines are certainly going to result.

This checkpoint system will pose a serious hindrance to people's right to attend the protest.

Roy Bourgeois

Sworn before me this _____ day of November, 2002.

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Defendants

Verification

Before me, the undersigned authority, personally came and appeared,

who after being duly sworn, deposed and said:

I have read this complaint and every fact in it is true to the best of my knowledge.

Affiant

Sworn before me this _____ day of November, 2002.

Notary

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Motion for Temporary Restraining Order and Preliminary Injunctive Relief

Now into court, through undersigned counsel, come plaintiffs in this matter, who respectfully urge that this court hold conferences, arguments, and hearings as it deems appropriate in order to grant temporary, preliminary and permanent injunctive relief as prayed for in the complaint.

Gerald Weber, Legal Director
(Georgia Bar No. 744878)
ACLU of Georgia
142 Mitchell Street, S.W.
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(404) 523-6201
Attorney for Plaintiffs

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New Orleans, LA 70118
504-861-5590; fax 504-861-5440
Cell in Columbus 504-606-3073
Attorney for Plaintiffs

A copy of this pleading and all attachments has been served on opposing counsel this _____ day of November, 2002.

Counsel for plaintiffs

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Notice That Opposing Counsel Has Been Notified of
Plaintiff's Application for Temporary Restraining Order and Preliminary Injunctive Relief

Undersigned counsel has notified opposing counsel, _____,
by telephone and by delivering a copy of these pleadings that plaintiffs are applying for a
temporary restraining order and preliminary injunctive relief at _____time and on the
_____ day of November, 2002.

Gerald Weber, Legal Director
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Motion to Set Hearing Date and Time for
Plaintiff's Application for Temporary Restraining Order and Preliminary Injunctive Relief

Plaintiffs request that this court set a date and time for a hearing on plaintiff's application for temporary and preliminary injunctive relief.

Respectfully,

Gerald Weber, Legal Director
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ACLU of Georgia
142 Mitchell Street, S.W.
Atlanta, Georgia 30303
(404) 523-6201 Attorney for Plaintiffs

William P. Quigley
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7214 St. Charles Avenue
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A copy of this pleading and all attachments has been served on opposing counsel this ____ day of November, 2002.

Counsel for plaintiffs

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Order

Considering the verified complaint filed in this matter, the motion for temporary and preliminary injunctive relief, the notice to opposing counsel, and the memorandum in support of injunctive relief, it is hereby ordered that this matter be set for hearing on the _____ day of November, 2002 at _____ o'clock ___m in this court.

Date

U.S. District Judge

