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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JUAN MARTINEZ,)	Hon.
Plaintiff,)	Case No.
vs.)	<u>Civil Action</u>
)	
CITY OF TRENTON, NEW JERSEY,)	COMPLAINT
DOUGLAS H. PALMER, and)	
ERIC TUNSTALL, in their official)	
capacities, and their successors,)	
Defendants.)	

Plaintiff Juan Martinez, by way of complaint against defendants, hereby avers:

I. PARTIES

1. Martinez is an individual residing at 508 Lamberton Street, Trenton, New Jersey. He is a community activist who is involved in numerous local issues, many of which affect the

Hispanic and other minority communities in Trenton. In the course of this involvement, Martinez regularly engages in a variety of expressive activities, including press conferences, press releases, public statements, marches and demonstrations. Martinez expects and intends in the future to continue his community involvement and concomitant expressive activity.

2. The City of Trenton is a municipal corporation organized under the laws of the State of New Jersey, with its offices at 319 East State Street, Trenton, New Jersey.

3. Douglas H. Palmer is the mayor of the City of Trenton and is the chief executive officer of the municipality. As set forth below, he or his office is ultimately authorized to issue permits or grant permission for the use of Trenton's public facilities for expressive activity. Mayor Palmer is sued in his official capacity.

4. Eric Tunstall is the director of public property for the City of Trenton, and is the city official responsible on a day-to-day basis for overseeing the use by citizens of public property belonging to the City of Trenton. He is sued in his official capacity.

II. JURISDICTION

5. This is a suit for federal civil rights violations, brought pursuant to 42 U.S.C. §1983, together with pendent state constitutional, statutory and common law claims.

6. The Court has jurisdiction over plaintiff's federal claims pursuant to 28 U.S.C. §1331, as an action arising under the Constitution of the United States; and 28 U.S.C. §1343(a)(3), to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States; and over plaintiff's pendent state law claims pursuant to 28 U.S.C. §1367.

7. Venue is properly laid pursuant to 28 U.S.C. 1391(b), in the District of New Jersey, because all parties reside or are located in this district, and the events giving rise to the claim occurred in this district.

III. SUBSTANTIVE ALLEGATIONS

8. The municipal offices of the City of Trenton are in a complex of buildings located on the 300 block of East State Street in downtown Trenton.

9. The municipal complex consists of the old Trenton City Hall, which was built and open to the public in 1909; and the Trenton City Hall Annex, built and open to the public in 1977.

10. The two buildings are connected by a three-story glass-enclosed atrium and adjacent landscaped, open-air plaza that contains benches and picnic tables.

11. The atrium and plaza area form a continuous, single unit and are akin to a public park.

12. The atrium and plaza area are, and always have been, open to the public. There is a bulletin board and a display table in the atrium, both of which contain literature placed there by various community, political and religious groups, as well as by the city. There are sofas, chairs and side tables in the atrium.

13. By its nature, character, layout and public accessibility, the atrium and plaza are not only conducive to public access and expressive activity, but encourage it.

14. The atrium and the plaza have frequently been used for expressive activity. On information and belief, the mayor and other city officials often use the space for press conferences, and other community groups have used it for press conferences, announcements,

campaign kickoffs and endorsements, public information campaigns, historical reenactments, public health proclamations, Christmas parties, St. Patrick's Day parade announcements, children's Halloween events, award ceremonies, culinary festivals, bar association functions, and community conferences.

15. There are no formal or written procedures or policies for obtaining access to the atrium and plaza for expressive activity. Currently the city requires written application to the mayor's office or to the municipal Office of Public Property, describing the purpose of the gathering, the anticipated number of participants, and any resources (such as microphones, chairs or tables) required. For an undisclosed fee, City Hall will provide security resources to speakers who wish to use the atrium for expressive purposes after 4:30 p.m.

16. The decision to grant access to the atrium and plaza is made by the mayor or director of public property on an ad hoc, discretionary basis. There exist no standards or criteria -- formal or informal, written or unwritten -- that govern the decision whether to grant access.

17. On March 16, 1999, by telephone conversation with the Office of Public Properties, Martinez, acting on behalf of a group called the Hispanic Churches of Mercer County, requested and received tentative permission to use the atrium and plaza for a press conference on March 23, 1999. Martinez's group wished to make a public statement criticizing the mayor's plan to replace the chief of police with a civilian director of public safety. Martinez was told that his press conference would be entered into the scheduling calendar for the atrium.

18. Martinez was subsequently required to submit his request for use of the atrium in writing, and did so by fax dated March 19, 1999.

19. On March 22, 1999, Martinez received a call from Renee Killian, the city's director of public relations, who required Martinez to disclose the number of participants, the sponsors of the conference, and the topic of the conference. After Martinez disclosed that the conference would criticize a position taken by the mayor, his request to use the atrium was denied, on the ground that the topic of the conference was "political."

20. Martinez was ultimately barred from using the atrium and forced to hold the press conference on the steps outside city hall.

21. Martinez intends to continue his involvement in community affairs, and expects and intends in the future to request the use of the city hall atrium for expressive purposes similar to that which prompted his request in March 1999.

22. The actions of defendants described above, both generally and specifically as applied to Martinez, were taken under color of state law.

23. The actions of defendants described above, both generally and specifically as applied to Martinez, constitute an official policy, practice, custom or usage of the City of Trenton.

24. Through his counsel, Martinez submitted a request for access to the government records that would document the Mayor's use of the atrium and that of all others who have used the atrium for expressive purposes. Martinez also asked for a written statement of the fee charged for security after 4:30 p.m. The defendants have declined to produce any of the requested records.

COUNT I

25. Martinez incorporates the averments of paragraphs 1 through 24 as if fully set forth herein.

26. The atrium and plaza are a public forum under the First Amendment to the United States Constitution and Article I, Paragraphs 6 and 18 of the New Jersey Constitution, and accordingly Trenton must permit public access for expressive activity on a strict content-neutral basis, subject only to reasonable and narrowly tailored “time, place and manner” regulations.

27. Both generally and with respect to the specific incident described above, the defendants’ approach to access to the atrium and plaza is unconstitutional and violates the First Amendment and Article I, Paragraphs 6 and 18 of the New Jersey Constitution, in that defendants permit or deny access to the area for expressive purposes based on the viewpoint, content or subject matter of the proposed speech.

28. As a proximate result of defendants’ actions as described above, plaintiff has suffered irreparable injury and will continue in the future to suffer irreparable injury, in that he has been and will be deprived of his right to free speech and association as guaranteed by the First Amendment to the Constitution, and the New Jersey Constitution, Article I, Paragraphs 6 and 18.

29. As a further proximate result of defendants’ actions, plaintiff has suffered additional compensable injury in the nature of constitutional deprivations.

WHEREFORE, plaintiff demands judgment in his favor and against defendants as follows:

a. Declaring the atrium and plaza area of Trenton City Hall to be a public forum, subject to full First Amendment limitations on the city's ability to restrict public access thereto for expressive purposes.

b. Preliminarily and permanently enjoining the City of Trenton from regulating access to the City Hall atrium and plaza on the basis of the subject, content or viewpoint of speech or expressive activity proposed there.

c. For compensatory damages.

d. For costs, attorney's fees and other appropriate relief.

COUNT II

30. Plaintiff incorporates the averments of paragraphs 1 through 29 as if fully set forth herein.

31. Defendants' ad hoc approach to granting or denying access to the City Hall atrium and plaza, which contains no written, formal or other standards or criteria to govern the decision-making process, violates the First Amendment of the United States Constitution and Article I, Paragraphs 6 and 18 of the New Jersey Constitution in that it:

A) Constitutes an invalid prior restraint on speech.

B) Allows arbitrary and discretionary suppression of protected speech.

C) Permits municipal administrators to make completely standardless decisions, based on their own excessive and unfettered discretion, about which speech should be permitted and which should not.

D) Allows content and viewpoint censorship of speech that can easily be used to prevent expression of a particular point of view.

32. As a proximate result of defendants' action, plaintiff has been irreparably injured, and will continue in the future to be irreparably injured, in that he has been and will be deprived of his right to free speech and association under the First Amendment to the Constitution and Article I, Paragraphs 6 and 18 of the New Jersey Constitution.

33. As a further proximate result of defendants' actions, plaintiff has suffered additional compensable injury in the nature of constitutional deprivations.

WHEREFORE, plaintiff demands judgment in his favor and against defendants as follows:

a. Declaring defendants' current method of permitting or denying access to the atrium and plaza for expressive activity to be an invalid prior restraint, unconstitutional and invalid on its face, and/or as applied to plaintiff.

b. Preliminarily and permanently enjoining the City of Trenton from continuing to use, in any fashion, its current method of granting or denying access to the city hall atrium and plaza on an ad hoc, totally discretionary basis.

c. For compensatory damages.

d. For costs, attorney's fees and other appropriate relief.

COUNT III

34. Plaintiff incorporates the averments of paragraphs 1 through 33 as if fully set forth herein.

35. New Jersey recognizes a cause of action for failure to provide public access to government records, by statute, N.J.S.A. 47:1A-2, and under common law, Irval Realty v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366 (1972).

36. Defendants have represented that a scheduling calendar is used to specify who will use the city hall atrium for expressive activity, and that additional security resources are available for a price if the atrium is scheduled for use after 4:30 p.m.

37. Martinez has requested copies of the scheduling calendar and the schedule of after-hours fees, as well as copies of any other written requests for use of the atrium, lists of speakers who have used the atrium, or records of payment for security or other city facilities.

38. The requested documents are “public records” under the New Jersey Right to Know statute or New Jersey common law.

39. Defendants have refused to provide any of the requested documents.

40. Defendants’ failure to provide these records violates the statutory and common law right of public access to government records.

41. As a proximate result of defendants’ refusal to provide these documents, plaintiff has suffered irreparable injury, and will continue in the future to suffer irreparable injury, in that he has been and will be deprived of his right to examine public government records as guaranteed by state law.

WHEREFORE, plaintiff demands judgment in his favor and against defendants as follows:

a. Ordering defendants to produce the following documents:

- i. Calendars and logs that memorialize use of the atrium.
- ii. All requests, written and unwritten, for use of the atrium.
- iii. A list of all speakers who have used the atrium, including press conferences held by the mayor and members of city council.

- iv. Records of payment for security and city facilities such as sound systems, podium etc.
- b. For compensatory damages.
- c. For costs, attorney's fees and other appropriate relief.

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AMERICAN CIVIL LIBERTIES UNION
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Lenora M. Lapidus

CERTIFICATION

I certify that there are no other known actions or arbitrations relating to this action and there are no known parties who should be joined with respect to the matter in controversy.

GRAYSON BARBER, L.L.C.

Grayson Barber

Dated: August __, 1999