

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**JARRET WOLFMAN and
OCCUPY THE COURTS,**

Plaintiffs,

- against -

**WESLEY FRENCH, ACTING
NATIONAL RELOCATION COUNSELOR/
PROGRAM MANAGER FOR OUTLEASING,
SITE ACQUISITION AND URBAN
DEVELOPMENT, GENERAL
SERVICES ADMINISTRATION (“GSA”);
JOANNA ROSATO, REGIONAL
COMMISSIONER, GENERAL
SERVICES ADMINISTRATION,**

Defendants.

COMPLAINT

**A JURY TRIAL IS
DEMANDED**

PRELIMINARY STATEMENT

1. This is an action for a declaratory judgment and a preliminary injunction to prevent defendants from violating plaintiffs’ First Amendment rights. Plaintiffs further seek damages, both compensatory and punitive, an award of costs, interest, and attorney’s fees, and such other and further relief as this Court deems equitable and just.

JURISDICTION

2. This action is brought to vindicate plaintiffs’ rights under the First and Fourteenth Amendments to the Constitution of the United States.

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343(3) and (4), this being an action seeking redress for the violation of the plaintiff’s constitutional and civil rights.

VENUE

4. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391 (a), (b) and (c).

5. At all times all parties resided and all acts took place within the venue of the southern district.

TRIAL BY JURY

6. Plaintiffs demand a trial by jury.

PARTIES

7. **Occupy the Courts** will be a one day occupation of space and mass exercise of First Amendment rights near over 120 Federal courthouses in at least 46 states across the country, including the U.S. Supreme Court in Washington, D.C., on Friday January 20, 2012.

8. The purpose of the day of action is to “to mark the second anniversary of the U.S. Supreme Court’s infamous *Citizens United v. Federal Election Commission* decision that opened the floodgates to unlimited corporate money in elections.”

9. Occupy the Courts was inspired by Occupy Wall Street and Dr. Cornel West.¹

10. Plaintiff JARED WOLFMAN is an organizer associated with Occupy the Courts.

¹ See <http://movetoamend.org/occupythecourts>.

11. Defendant WESLEY FRENCH is an Acting National Relocation Counselor/Program Manager for Outleasing, Site Acquisition and Urban Development at the GSA.

12. Defendant JOANNA ROSATO is a Regional Commissioner at the GSA.

13. These defendants are the GSA policymakers responsible for the decisions to deny Occupy the Courts' permit application and administrative appeal.

14. At all times relevant herein, defendants were acting in the course and scope of their duties and functions as officers, agents, servants, and employees of the GSA, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. At all times relevant herein, they were acting for and on behalf of the GSA, with the power and authority vested in them as such.

STATEMENT OF FACTS

15. On December 15, 2011, Plaintiff Wolfman contacted defendant French to begin what he understood to be a process required by GSA to apply for a permit to hold a First Amendment assembly action outside the Daniel Patrick Moynihan United States Courthouse on the Pearl Street side on January 20, 2012 between 4:00 and 6:00PM involving around 200 non-corporate persons who wish to engage in "a small rally with speakers and maybe some singing."

16. As a result of communications with defendant French between December 15, 2011 and December 29, 2011, plaintiff Wolfman submitted an Application/Permit for Use of Space in Public Buildings and Grounds on December 29, 2011.

17. On January 9, 2012, defendant French wrote plaintiff Wolfman: "I am getting feedback from the US Courts that they have two events on Friday, January 20th (a

morning citizenship swearing in, and a 4:00 p.m. installment of a federal judge). With that, I need to work on finding out what the second event is and its impact.”

18. By letter dated January 13, 2012, defendant French communicated GSA’s denial of the application, stating: “As you know, the Court is holding events on January 20th at 500 Pearl Street, both in the morning and late afternoon, which will result in many visitors and will necessitate increased security to both the building and grounds. The activity proposed in your application will interfere with these events. Consequently, we are denying your application pursuant to 41 C.F.R. § 102-74.500(c). However, as we discussed, we will continue to offer your group assistance in coordinating with City agencies and in finding an alternate location.”

19. Represented by counsel, plaintiffs timely submitted a written appeal within five days of the January 13, 2012 denial. *See* 41 C.F.R. § 102–74.510.

20. The appeal argued that the denial warranted reversal because the proposed activities are beyond the scope of the conduct regulated by the Subpart cited as the basis for the denial.²

21. The appeal also argued that the denial was unreasonable and exceeds the government’s authority to regulate speech and related expressive activity in a traditional public forum, and that even assuming, *arguendo*, that the denial is content neutral, it lacks narrow tailoring and fails to provide ample alternatives.

² 41 C.F.R. § 102-74.500(c) permits the denial of an application if “(c) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property.” Under 41 C.F.R. § 102-74.460, the entire Subpart “establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by 40 U.S.C. 581(h)(2).” Occupy the Courts intends to assemble in a public area outside of a “public building.” Thus, the proposed activity is outside the Subpart’s scope.

22. The appeal letter required a response by noon on Wednesday, January 18, 2012.

23. GSA has not responded to the appeal letter.

24. According to Occupy the Courts:

This protest is being held in front of the Federal courts to focus attention on the theft of our inalienable, human, Constitutional rights by the U.S. Supreme Court, and the Federal judiciary, and the handing off of those rights, by the Courts, to the Corporate elite. We are taking America "to the scene of the crime." By denying this permit request, the GSA is denying NYC's 99% the right to join American all over the country to be heard on this most important issue.

CLAIMS FOR RELIEF

UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

25. Plaintiffs incorporate by reference the allegations set forth in each preceding paragraph as if fully set forth herein.

26. The denial of the permit application and the constructive denial of the administrative appeal violated plaintiffs' rights under the First and Fourteenth Amendments to the Constitution.

27. Plaintiffs' and the public's interest in holding a First Amendment assembly while occupying the public spaces around the Daniel Patrick Moynihan United States Courthouse on the Pearl Street side between 4:00 and 6:00PM involving around 200 non-corporate persons who wish to engage in "a small rally with speakers and maybe some singing" on the two-year anniversary of the U.S. Supreme Court's infamous *Citizens United v. Federal Election Commission* decision, in solidarity with similar occupations occurring at the same time in cities across the country, is clear.

28. GSA has known about Occupy the Courts' January 20, 2012 occupation plans since at least December 15, 2011. However, it was not until nearly a month later – on January 9, 2012 – that GSA indicated there were two other events the Court had scheduled on January 20, 2012. Notably, according to GSA, both purportedly conflicting events were scheduled by the Court. It is not clear when, or whether the decision to prioritize these events over Occupy the Courts' proposed event was made without reference to their content. Between January 9, 2012 and January 13, 2012, GSA provided no information about the ways in which Occupy the Courts' proposed activities might relate to or potentially interfere with either of these events; nor are any such details provided in the denial; nor have they been provided since.

29. GSA's denial is not narrowly tailored to serve the government's legitimate interests in this matter. Both the GSA-administered property and the public sidewalks adjoining the Daniel Patrick Moynihan United States Courthouse on the Pearl Street side can accommodate 200 or more people, whether or not there are other events going on within the courthouse. Groups, including groups of hundreds of people, frequently appear in those spaces in connection with the Court's regular business, and particularly in connection with high-profile cases. The United States Marshals Service and its partners routinely facilitate events of the type Occupy the Courts will engage in. Additionally, there are less restrictive means to achieve any of the government's legitimate interests, while preserving Occupy the Courts' First Amendment rights.

30. Finally, GSA's denial fails to provide constitutionally significant alternatives. In this respect, the denial states only: "As we discussed, we will continue to offer your group assistance in coordinating with City agencies and in finding an alternate

location.” This statement does not amount to the provision of any alternative, let alone an ample one. In fact, to date, GSA has directed Occupy the Courts to apply for a Temporary Public Assembly Permit from the New York City Department of Buildings, although no such permit – or indeed any permit - would be required by any New York City agency for a group to gather and hold a stationary demonstration without using amplified sound, as Occupy the Courts plans to do.

WHEREFORE, plaintiffs respectfully request this Court issue an Order including the following relief:

- a. A declaratory judgment declaring that defendants’ denials of plaintiffs’ permit applications were unconstitutional;
- b. A preliminary injunction requiring defendants to issue the permit requested by plaintiffs;
- c. Compensatory and punitive damages in the amount to be determined by a jury;
- d. Costs and reasonable attorney’s fees; and
- e. Such other and further relief as this Court may deem appropriate and equitable.

Dated: New York, New York
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