

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

TARA JILL CICCARONE and TROY
BOHN,

Plaintiffs,

– Versus –

The CITY OF NEW ORLEANS;
MITCHELL J. LANDRIEU, in his
official capacity; RONAL SERPAS, in
his official capacity.

Defendants.

NUMBER: 2:13-cv-133

JUDGE:

MAGISTRATE JUDGE:

VERIFIED COMPLAINT

INTRODUCTION

1. This is an action under 42 U.S.C. §§ 1983 and 1988. Plaintiffs Tara Ciccarone and Troy Bohn seek a temporary restraining order, a preliminary injunction and, eventually, a permanent injunction barring the City of New Orleans from enforcing certain provisions of New Orleans Municipal Code §24,913, also known as the City’s “Superbowl Clean Zone” ordinance, as well as certain provisions of the City’s Super Bowl Permitting and Enforcement Guide, in violation of their First and Fourteenth Amendment rights. Plaintiffs also seek a declaratory judgment, nominal damages and attorneys’ fees.

JURISDICTION AND VENUE

2. The Court has original jurisdiction in this matter under 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the City of New Orleans is located within this District, and because the individual Defendants reside in this District.

4. Declaratory relief is authorized by 28 U.S.C. § 2201 and 2202. A declaration of law is necessary to determine the respective rights and duties of the parties.

THE PARTIES

5. Plaintiff TARA JILL CICCARONE is an adult resident of New Orleans, Louisiana, and a member of Occupy New Orleans, an activist group that regularly protests at strategic locations in the City, using signs, banners and other displays to bring attention to political, social and economic issues of concern.

6. Plaintiff PASTOR TROY BOHN is an adult resident of Kenner, Louisiana, and the pastor of Raven Ministries, a religious congregation that regularly preaches on Bourbon Street in the French Quarter. He travels to New Orleans approximately three times a week for that purpose and fully intends to do so during the effective period of the Clean Zone Ordinance, from January 28 to February 5. When he and his congregation preach, they carry signs and display a large cross with the words “Raven Street Church” emblazoned on the crossbeam.

7. Defendant CITY OF NEW ORLEANS is a municipality of the State of Louisiana. At all relevant times, the City employed the individual defendants named below. The City is directly responsible for acts complained of herein due to the policies and practices of its police department and other employees, and because it enacted the Clean Zone Ordinance. The City maintains the right and power to sue and be sued.

8. Defendant MITCHELL J. LANDRIEU, is the Mayor and a resident of New Orleans. He is responsible for the final supervision of the New Orleans Police Department, and for the final execution and enforcement of the City's ordinances. Landrieu is a final policymaker on all issues related to the ordinance challenged here, and he is sued in his official capacity.

9. Defendant RONAL SERPAS is a resident of New Orleans and the Superintendent of the New Orleans Police Department. He enforces Louisiana's criminal laws and the City's ordinances. Serpas is a final policymaker on all issues related to the ordinance challenged here, and he is sued in his official capacity.

FACTUAL ALLEGATIONS

The Clean Zone

10. The Clean Zone and its relevant restrictions are the product of two official City policies: Municipal Code §24-913 ("the Ordinance"), passed in its current form on December 6, 2012, and attached hereto as **Exhibit P-1**, and the "Super Bowl XLVII Permit and Code Enforcement Guide" ("the Guide"), promulgated by the Mayor's office and set forth here as **Exhibit P-2**.

11. Under those enactments, restrictions in the Clean Zone begin at 6:00AM on January 28, 2013, carry through the Super Bowl on February 3rd, and end at 6:00PM on February 5th. See **Exhibit P-1**, Preface, p.1.

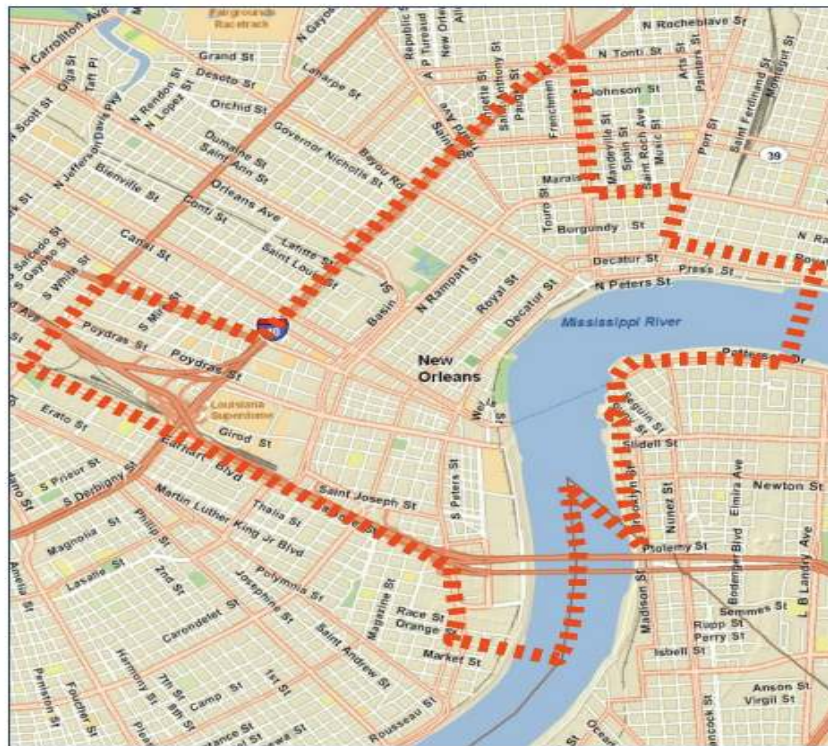
12. The area of the Clean Zone is defined as follows:

M.C.S. 24-913, Section 1.

- a. The area bounded by Earhart Boulevard to Calliope Street; Religious Street to Orange Street proceeding across the Mississippi River along the West bank Levee (at the Orleans Parish line); continuing across the Mississippi River to Elysian Fields Avenue (including Crescent Park); North Claiborne Avenue to Tulane Avenue; North Broad to Earhart Boulevard; and including the Louisiana Superdome Property (Champion Square), the New Orleans Arena, and the Ernest N. Morial Convention Center property.

[See **Exhibit P-1**, §1, p.2]

13. This is a map of the Clean Zone, taken from the Guide, see **Exhibit P-1**, p.4:



14. Per the map, the Clean Zone includes approximately most of the Central Business District, all of the French Quarter, most of the Marigny and many of the surrounding neighborhoods, as well as the bank of the Mississippi River opposite the Quarter.

15. Within the Clean Zone, during the effective times, the Ordinance imposes the following prohibitions:

(a) Section 3(j):

Inflatables, cold air balloons, banners, pennants, flags, building wraps, A-frame signs, projected image signs, electronic variable message signs, and light emitting diode signs of any kind shall be prohibited except for those sanctioned or authorized by the City (subject to the requirements set forth in Section 4 below) or by the National Football League.

[See **Exhibit P-1**, p.4]

(b) Section 4:

Any temporary signage approved by the City pursuant to Section 3 above shall be required to consist of at least 60% Super Bowl/NFL branding, look and feel, and no more than 40% third party commercial identification.

[See **Exhibit P-1**, p.5]

16. The express language of Section 3(j) of the Ordinance bars only banners, pennants, flags, and those other forms of communication set forth therein, as listed in Paragraph 15(a) above.

17. The Guide adds to the Ordinance's restrictions a ban on all temporary signs that do not meet the content requirements of Section 4 of the Ordinance. See **Exhibit P-2**, p.24, "Banner & Signs"

18. The Guide also adds that no temporary signs or other forms of listed in Section 3(j) of the Ordinance will be permitted unless the signholder is an official

NFL sponsor. See **Exhibit P-2**, p.24, “Banner & Signs.”

19. Specifically, the Guide prohibits the following activity related to banners and signs:

Banner & Signs:

The City of New Orleans Clean Zone Ordinance Number 24,913, M.C.S. prohibits the following activity related to Banners & Signs & Advertising (unless sanctioned and authorized by the City and the National Football League)

- ❖ Unless the applicant is an official NFL sponsor, no temporary signs, banners, inflatables, cold air balloons, pennants, flags, building wraps, A-frame signs, billboards, projected image signs, electronic variable message signs, or light emitting diode signs of any kind can be applied for or permitted.
- ❖ Any temporary signage approved by the City pursuant to SECTION 3 above shall be required to consist of at least 60% Super Bowl/NFL branding, look and feel, and no more than 40% third party commercial identification.
- ❖ Inflatables, cold air balloons, banners, pennants, flags, building wraps, A-frame signs, projected image signs, electronic variable message signs, and light emitting diode signs of any kind shall be prohibited except for those sanctioned or authorized by the City and by the National Football League (NFL).
- ❖ General and mobile advertising (including, but not limited to, signs on or attached to a vehicle, portable device or person) shall be prohibited except for promotional displays sanctioned or authorized by the City and by the National Football League, including, but not limited to, those placed on existing public utility poles.
- ❖ The distribution or provision of free products, service or coupons (otherwise referred to as sampling) and other promotional giveaways shall be prohibited except if such activities are sanctioned and authorized by the National Football League.

[See **Exhibit P-2**, p.24, “Banner & Signs”]

20. The Guide imposes additional, specific requirements upon banners, in relevant part as follows:

Banner Permit

A **Banner Permit** from the Department of Safety and Permits is required for any banner in the City of New Orleans, including building wraps. The City's sign regulations are designed to: protect the public safety - so that signs do not fall down on pedestrians or customers, to prevent signs from becoming projectiles in the event of heavy winds or rains, and to regulate the aesthetics of an area as to the size and number of signs visible at any given time.

- Required Documents:
 - Sign Permit Application Letter from property owner or lease giving permission for property use for the permit purpose (if applicant is not the owner)
 - Measurements of the frontage of tenant space and the square footage of the wall in which the business has its main entrance
 - Sketch of proposed signing clearly indicating the copy and detailing colors and sizes
- Fees: \$150.00
- You May Also Need: Electrical Permit (if applicable); Review by the City Planning Commission staff, Historic District Landmarks Commission approval of the method of attachment, or the Vieux Carré Commission approval depending on the location

[See **Exhibit P-2**, p.25, "Banner Permit"]

21. The Guide imposes additional, specific requirements on temporary signs, in relevant part as follows:

Attached/Detached Sign Permit

An **Attached/Detached Sign Permit** from the Department of Safety and Permits is required to erect, construct, post, paint, alter, maintain, or relocate any sign in the City of New Orleans. The City's sign regulations are designed to: protect the public safety - so that signs do not fall down on pedestrians or customers, to prevent signs from becoming projectiles in the event of heavy winds or rains, and to regulate the aesthetics of an area as to the size and number of signs visible at any given time.

- Required Documents:
 - Sign Permit Application
 - Letter from property owner or lease giving permission for property use for the permit purpose(if applicant is not the owner)
 - Plot plan indicating the location and setbacks of the proposed signage
 - Dimensions of the proposed signage
 - Measurements of the frontage of tenant space and the square footage of the wall in which the business has its main entrance
 - Sketch of proposed signing clearly indicating the copy and detailing colors and sizes
 - A Registered Sign Contractor is required in order to obtain sign permits.

Plaintiff Tara Jill Ciccarone

22. Tara Jill Ciccarone is a member of Occupy NOLA.

23. Ciccarone and several other Occupy members have planned a number of expressive activities for Super Bowl week, including the following:

(1) displaying the following flags in the Clean Zone, specifically in or near Jackson Square and on streets in between the Super Dome, the French Quarter, and near the Mississippi River,

- (a) a flag that reads “We are the 99%” or something similar;
- (b) a flag that looks like the American flag but has corporate logos on it;
- (c) a flag with a message emphasizing the important of free speech

(2) displaying various signs in the same areas, containing the following messages:

- (a) “Money is not more important than constitutional rights, despite what Clean Zone would indicate.”;
- (b) “Congress shall make no law ... abridging the freedom of speech...”;
- (c) “Your Tax Dollars Working to Help the Rich Get Richer”;
- (d) “Super Bowl XLVII – Sponsored by Corporate Greed”

(3) displaying a variable-message LED sign with the words “this sign is illegal” at a to-be-determined location in the Clean Zone.

24. Ciccarone also plans a “human billboard” operation in which she and several other Occupy members will stand side-by-side at various places in the Clean Zone, holding signs with ten-word messages about various political, social and economic problems in Louisiana and directing readers to online sources of additional information. For example, one sign would read “New Orleans: incarceration capital

of the world” and include a link to a website with contact information for someone who could be contacted for a true story behind the message.

25. Neither Ciccarone nor any other Occupy NOLA member is an official NFL sponsor.

26. None of Ciccarone’s proposed signs, flags or banners contain any NFL branding, look or feel.

27. Neither Ciccarone nor any other Occupy member has applied for a sign, banner or billboard permit, or any other permit of any kind.

28. Violation of the Ordinance is punishable by a \$500 fine and 6 months in jail. *See Exhibit P-1, §7.*

29. Because Ciccarone and the other Occupy members fear arrest, fines and incarceration, they are considering not undertaking their protest activities unless this Court intervenes.

Plaintiff Pastor Troy Bohn

30. Troy Bohn is the pastor of Raven Ministries, a religious congregation that preaches on Bourbon Street in the French Quarter every Friday and Saturday night.

31. As part of their religious exercise, Bohn and his congregation wear t-shirts and carry signs that read “I Love Jesus,” “Ask Me How Jesus Changed My Life” or similar messages, and they carry a large cross emblazoned with the words “Raven Street Church.”

32. Like Ciccarone and Occupy’s protest signs, neither Bohn nor Raven Ministries are official NFL sponsors, and none of Bohn’s signs contain any NFL “branding, look and feel.” Similarly, neither Bohn nor any other members of his congregation has not applied for any permits.

33. Bohn and his congregation too fear arrest, fines and prosecution under the Clean Zone restrictions.

CAUSES OF ACTION

FIRST CLAIM

(The First Amendment: The Ordinance and Guide impose a content-based, viewpoint-discriminatory prior restraint on free speech in the Clean Zone.)

34. Plaintiffs reallege and reincorporate the above allegations.

35. Taken together, Sections 3(j) and 4 of the Clean Zone Ordinance and the “Banner and Sign” restrictions of the Permitting Guide (the “Clean Zone Speech Restrictions”) impose a content-based, viewpoint-discriminatory imposition on all temporary signs, flags, banners and various other media from a traditional public forum.

36. In the alternative, the Clean Zone Ordinance and Guide impose a content-based, viewpoint-neutral measure that serves the same purpose.

37. Additionally, the Guide imposes a content-based, viewpoint-discriminatory prior restraint on the same speech.

38. Accordingly, Sections 3(j) and 4 of the Clean Zone Ordinance and the “Banner and Sign” restrictions of the Guide are subject to strict scrutiny.

39. The City has no compelling interest necessitating those restrictions.

40. Even if the City had a compelling interest necessitating those restrictions, the restrictions are not so narrowly-tailored that no less restrictive measures would satisfy the City's interest.

41. As a direct result of the restrictions, Plaintiffs fear arrest and prosecution if they follow through with their planned activities.

42. As such, the restrictions are facially unconstitutional under the First Amendment.

SECOND CLAIM

(The First Amendment: Alternatively, the Clean Zone Speech Restrictions are an improper restriction on the time, place or manner of free speech.)

43. Plaintiffs reallege and reincorporate the above allegations.

44. Because the Clean Zone Speech Restrictions are facially content-based, they cannot be valid time, place or manner restrictions.

45. However, even if the Clean Zone Speech Restrictions are content-neutral, they nonetheless impose an unconstitutional time, place or manner restriction on First Amendment activity in the Clean Zone, as they are not justified by a substantial state interest, are not narrowly tailored, and do not leave ample alternative fora for speech.

THIRD CLAIM

(First and Fourteenth Amendment: The Clean Zone Speech Restrictions are unconstitutionally vague.)

46. Plaintiffs reallege and reincorporate the above allegations.

47. The Clean Zone Speech Restrictions leave critical terms undefined, thereby failing to give signholders and other speakers notice of what First Amendment activities are prohibited.

48. The Restrictions also give little or no clear guidance to law enforcement, thereby encouraging arbitrary or selective enforcement.

49. Plaintiffs' proposed speech activities have been chilled by their fear of arrest and prosecution under the Restrictions.

50. The Restrictions therefore are unconstitutionally vague.

FOURTH CLAIM
(Fourteenth Amendment: The Clean Zone Speech
Restrictions are overbroad.)

51. Plaintiffs reallege and reincorporate the above allegations.

52. The Clean Zone Speech Restrictions have no legitimate sweep.

53. If the Restrictions had a legitimate sweep, it would be substantially overbroad because, in general, it criminalizes a substantial amount of protected speech relative to any legitimate sweep.

FIFTH CLAIM

(Fourteenth Amendment: The Clean Zone Speech Restrictions violate
the Equal Protection and Due Process Clauses.)

54. Plaintiffs reallege and reincorporate the above allegations.

55. The Clean Zone Speech Restrictions violate the Equal Protection Clause by discriminating against certain individuals in a manner that implicates a fundamental right.

56. The Restrictions violate the Due Process Clause by vesting unbridled discretion in the Defendants for approving or disapproving signs.
57. The Restrictions violate the Due Process Clause by vesting unbridled discretion in a private entity – the National Football League – to control the content of signs and other public media in the Clean Zone.
58. The Guide separately violates the Due Process Clause by skirting the legislative authority of the New Orleans City Council.
59. The Guide violates the Due Process Clause by failing to give permit applicants and other speakers notice of wrongdoing and a meaningful opportunity to be heard.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Troy Bohn and Tara Jill Ciccarone, having no adequate remedy at law, request the following:

1. A temporary restraining order, preliminary injunction and eventually, permanent injunction barring Defendants and their agents from enforcing Sections 3(j) and 4 of the Ordinance, as well as any portion of the Guide governing the permitting and approval of temporary signs, banners and other media set forth in Section 3(j) of the Ordinance;
2. A declaratory judgment that Sections 3(j) and 4 of the Ordinance, as well as all portions of the Guide governing the permitting and approval of temporary signs, banners and other media set forth in Section 3(j) of the Ordinance, are unconstitutional;
3. Nominal damages;

4. Reasonable attorneys' fees, expenses and costs under 42 U.S.C. § 1988 and any other applicable law; and
5. Any equitable and additional relief which the Court deems proper.

Respectfully submitted by:

/s/ Justin Harrison
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VERIFICATIONS

I hereby verify that the allegations of this complaint are factually correct to the best of my knowledge.



Pastor Troy Bohn

I hereby verify that the allegations of this complaint are factually correct to the best of my knowledge.



Tara Jill Ciccarone

1/24/2013