IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

YUSEF M. SHARIF and JOHN T. BANCHERI,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action File
	:	No.
THE CITY OF ATLANTA,	:	
	:	
Defendant.	:	

COMPLAINT

COME NOW Yusef M. Sharif and John T. Bancheri, the Plaintiffs and street musicians who regularly perform within the City of Atlanta, and bring this Complaint seeking declaratory and injunctive relief and damages for violation of their rights to free speech, due process, and equal protection when the City of Atlanta adopted a vending ordinance prohibiting musicians from performing in public without a vending permit.

JURISDICTION AND VENUE

1.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 28 U.S.C. § 1367 (pendent jurisdiction). Venue rests with this Court.

PARTIES

2.

Plaintiff Yusef M. Sharif is a 60-year old classical jazz saxophonist, composer, and music instructor who has been harassed by the police and threatened with arrest for playing music in public in Atlanta in a location different than specified on his vending permit, thus violating the Atlanta Vending Ordinance.

3.

Plaintiff John T. Bancheri is a 45-year old blues and rock and roll guitarist, harmonica player, and singer who has been harrassed and threatened with arrest by Atlanta police officers for playing music with Atlanta city limits without having obtained a vending permit, thus violating the Atlanta Vending Ordinance.

4.

Defendant, the City of Atlanta, is subject to the jurisdiction and venue of this Court. Service of process may be effected on the Mayor of the City of Atlanta, William Campbell, 55 Trinity Avenue SW, Atlanta, Georgia 30355. At all times relevant hereto the City of Atlanta acted within the scope of its authority as a municipality chartered under the laws of the State of Georgia.

FACTUAL ALLEGATIONS

The Vending Ordinance

5.

Plaintiffs' ability to exercise their Constitutional rights of freedom of self-expression through music, as well to earn their livelihood, was curtailed by the City of Atlanta in 1993 when the City Council of Atlanta adopted a substitute vending ordinance, Ordinance 92-O-1306, codified at present as §§ 30-1401 to 1435 ("the Vending Ordinance".) The Atlanta Police Department has enforced this ordinance since that time.

6.

The Vending Ordinance prohibits vending of articles, merchandise, produce, food, or services on a public space in the City of Atlanta without a permit. ATLANTA, GA., CODE § 30-1426(a). Permit holders may only engage in vending of the classification stated on the permit and only on the location stated on the permit. Further, permits are not granted at all outside of certain geographic areas within the city.

7.

A nonrefundable $50.00 application fee must accompany each application for a vendor's permit, § 30-1428(b). In addition, musicians are charged an additional $50.00 annual permit fee.

8.

The Vending Ordinance requires street musicians to obtain a business license in order to apply for a vending permit. The annual license fee for a business license is $75.00.

9.

Only one permit may be issued per household, making it unlawful to perform in more than one location during the life of the permit. In addition, each vendor may have only two assistants working in the vendor's station at the same time, § 30-1430(b), presumably making it unlawful for a musical group of more than three people to play together in public in Atlanta.

10.

Only a limited number of public vending permits are granted by the City each year. Once all allotted vending spaces have been permitted, new applicants for a vending permit to perform street music are placed on a "waiting list" and are denied the right to perform in public.

8W301□10533363v1

11.

City officials responsible for issuing vending permits enforce the Ordinance in an arbitrary manner. For example, some street musicians are charged $150, the fee for a merchandise permit, instead of $50, the fee for a services permit that street musicians are required to obtain. Some applicants are required to renew permits every 45 days, even though the Ordinance provides that the permit is an "annual permit."

12.

The Vending Ordinance specifically includes "street music" as an activity requiring a permit, yet exempts other free speech activity including "selling newspapers at large other than from a fixed location on public space or on public streets," § 30-1426(a).

13.

The term "street music" is not defined by the Vending Ordinance.

14.

The other activities covered by the Vending Ordinance (including the selling of food, crafts, flowers, clothing, and accessories) are of a highly commercial nature. Unlike these activities, the "street music" engaged in by Plaintiffs is not strictly commercial, because neither Plaintiff requires payment from listeners in exchange for playing music.

Yusef M. Sharif

15.

Plaintiff Sharif, a classical jazz saxophonist, composer, and music instructor, has played music on Atlanta city sidewalks for 7 years, and has been a street musician for over 20 years.

16.

Plaintiff Sharif has complied with the Vending Ordinance in the past by obtaining a permit. Most recently, he held a permit to perform at 297 East Paces Ferry Road in the Buckhead entertainment district.

17.

Plaintiff Sharif usually asks for permission to play from store owners whose sidewalks he performs in front of.

18.

Plaintiff Sharif desires to play in different locations, but has been largely confined to the area specified in his permit out of fear of arrest for violating the Vending Ordinance.

19.

On August 14, 1998, Plaintiff Sharif was playing music in front of the Hard Rock Cafe at the intersection of International Boulevard and Peachtree Street. He had previously sought and been granted permission from the Hard Rock Cafe's management. At 6:30 p.m. Sharif was confronted by Atlanta Police Officer K.L. West, who asked whether he held a permit to play in that location. When Sharif stated that he did have a valid permit, but for a different location, Officer West ordered Sharif to cease playing. When Sharif asserted that he had a constitutional right to play music in public, Officer West threatened to arrest Sharif. At that point, Sharif ceased playing to avoid arrest. In similar incidents, Sharif has been confronted by the police or by city "ambassadors" at least two dozen times within the past six years for playing near this intersection without a permit.

RW101□10533363v1

20.

On August 6, 1999, Plaintiff Sharif was threatened with arrest while playing in Buckhead and was ordered by a police officer to cease playing because his permit to play in that location had expired. Other street musicians in the vicinity were given citations that evening, and Sharif witnessed a nearby musician arrested for playing drums without a permit.

21.

In 1997, Plaintiff Sharif was confronted by the police at the Braves MARTA shuttle drop-off point, where an Officer Leslie told him that permission from a MARTA supervisor was required to play there. Sharif obtained such permission from the MARTA supervisor in charge of the Braves shuttles, and yet Officer Leslie nonetheless refused to allow Sharif to play in the vicinity.

22.

While any money paid to Plaintiff Sharif for his street performers consists strictly of donations from listeners and passers-by, as a professional and widely-acclaimed musician and music instructor Sharif depends on exposure gained from playing in public to build an audience and to secure employment. In addition to many paid performance dates arising from public exposure to Sharif on the street, Atlanta magazine wrote in a 1997 profile of Sharif of a rhythm and blues group who heard Sharif playing in front of the Hard Rock Cafe on Peachtree Street and promptly asked him to appear in a music video. The Atlanta Journal & Constitution also profiled Sharif's musical career in a September 1996 article, in part due to public recognition from the audience that Sharif has built by playing in public.

23.

The above-described police enforcement of the Vending Ordinance has both interfered with Plaintiff Sharif's constitutional rights and his ability to make a living.

John T. Bancheri

24.

Plaintiff Bancheri, a blues and rock and roll guitarist, harmonica player, and singer, has played music on Atlanta city sidewalks for 10 years. He is currently enrolled as a student at Georgia State University.

25.

Plaintiff Bancheri has never applied for a permit under the Vending Ordinance, in part because he does not play enough hours to earn enough money to justify the expense of paying for a permit.

26.

Plaintiff Bancheri was confronted by an Atlanta Police Officer at 3:30 a.m. on August 14, 1999, on Peachtree Street at its intersection with Roswell Road and East Paces Ferry. When learning that Bancheri held no permit, the officer ordered Bancheri to cease playing music. This was at least the fifth time that Atlanta police officers have ordered Bancheri to cease playing music in Buckhead on the authority of the Vending Ordinance. Fearing arrest, Bancheri has always complied.

27.

RW101□10533331v1

Plaintiff Bancheri accepts donations from listeners who drop money into his guitar case but does not require payment for his services when he plays on the streets. In part, his public recognition from performing in the streets led to a high-visibility performance at the 1998 Atlanta Dogwood Festival.

28.

The above-described police enforcement of the Vending Ordinance has both interfered with Plaintiff Bancheri's constitutional rights and his ability to make a living.

CLAIMS FOR RELIEF

29.

Plaintiffs reallege all the within and foregoing allegations for each and every claim for relief.

30.

Sidewalks are a traditional public forum.

31.

The Vending Ordinance is an impermissible restriction on free expression in a traditional public forum, both on its face and as applied, in violation of the First and Fourteenth Amendments of the United States Constitution.

32.

The Vending Ordinance is an impermissible restriction of Plaintiffs' Constitutional rights by a subdivision of the State and thus violates the Privileges and Immunities clause of the Fourteenth Amendment.

33.

The Vending Ordinance obstructs Plaintiffs' freedom of speech and therefore constitutes a deprivation of liberty without due process of law in violation of the Due Process clause of the Fourteenth Amendment.

34.

The Vending Ordinance allows constitutionally protected street music to be performed by permit holders but denies expression of this protected form of expression for those who do not hold a permit. The freedom of expression is a fundamental right and so strict scrutiny must be applied to survive Equal Protection analysis. Because Defendant's "interest" in controlling the activities of street musicians is not necessary to further any compelling state interest, the Vending Ordinance as applied to street musicians violates the Equal Protection clause of the Fourteenth Amendment.

35.

In passing and enforcing the Vending Ordinance, Defendant has under color of law subjected Plaintiffs to a deprivation of rights secured by the U.S. Constitution and thus is liable under 42 U.S.C. § 1983.

36.

The Vending Ordinance, both on its face and as applied, violates Plaintiffs rights to freedom of life, liberty and property; protection to person and property and equal

protection; and freedom of speech under the Georgia Constitution, Art. I, Sec. I, paras. I, II, and V.

PRAYERS FOR RELIEF

WHEREFORE, on the basis of the foregoing, Plaintiffs pray that this Court:

(1) Issue a declaratory judgment that Defendant's actions, policies and procedures, embodied in ATLANTA, GA. CODE § 30-1401 to -1435 as applied to musicians who play on city streets, sidewalks, and rights of way and/or in city parks without requirement of payment for services, violated Plaintiffs' rights as secured under the free speech clause of the First Amendment of the United States Constitution, the privileges and immunities, due process, and equal protection clauses of the Fourteenth Amendment of the United States Constitution, 42 U.S.C. § 1983 and Article I, § 1 paragraphs 1 (life, liberty and property), 2 (protection to person and property; equal protection), and 5 (freedom of speech) of the Georgia Constitution;
(2) Permanently enjoin Defendant, its officers, agents, successors, employees, attorneys, and those acting in concert with it, from enforcing ATLANTA, GA. CODE § 30-1401 to -1435 with respect to musicians who play on city streets, sidewalks and rights of way or in city parks without requirement of payment for services or otherwise engaging in any policy or practice which infringes upon the free speech rights of street musicians and any other protected activity restrained by the Vending Ordinance;
(3) Order Defendant to issue a public apology to Plaintiffs;
(4) Grant to Plaintiffs judgment for nominal compensatory damages against Defendant in an amount reasonable and commensurate with the losses imposed upon them by Defendant's unlawful acts;
(5) Grant to Plaintiffs a jury trial on all issues so triable;
(6) Award to Plaintiffs the costs of the action and reasonable attorney's fees as provided by 42 U.S.C. § 1988 and federal and state law;
(7) Grant any and all additional relief as this Court deems proper and just.

Respectfully submitted this _____ day of _____, 1999.

_____

Gerald Weber, Legal Director
American Civil Liberties Union
Georgia Affiliate

142 Mitchell Street
Suite 301
Atlanta, Georgia 30303

RW101 10533331v1

(404) 523-6201

Georgia Bar No. 744878

_____

Alston & Bird
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7931

Joel L. Silverman
ACLU Cooperating Attorney
Georgia Bar No. 646365

_____

1100 Spring Street
Suite 200B
Atlanta, Georgia 30309
(404) 894-7713

Hannibal Heredia
ACLU
Cooperating Attorney
Georgia Bar No. 348274

RW301□10533363v1