No. 24-2235

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ANDREW THAYER, KRISTI KEORKUNIAN, and LINDA LOEW,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, TOM CARNEY, in his official capacity as Commissioner of the Chicago Department of Transportation, and LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:24-cv-3563
The Honorable Thomas M. Durkin

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

ROGER BALDWIN FOUNDATION OF
ACLU, INC.

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-2235

Short Caption: Bodies Outside of Unjust Laws, et al. v. City of Chicago, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Bodies Outside of Unjust Laws, Andrew Thayer, Kristi Keorkunian,Linda Loew

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Roger Baldwin Foundation of ACLU, Inc.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Rebecca K. Glenberg Date: 7/22/24

Attorney's Printed Name: Rebecca K. Glenberg

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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N/A

Attorney's Signature: /s/ Kevin M. Fee Jr. Date: 7/26/24

Attorney's Printed Name: Kevin M. Fee Jr.

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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JURISDICTIONAL STATEMENT

The District Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this is an action under 42 U.S.C. §1983 arising under the Fourteenth Amendments to the United States Constitution.

Appellants appeal from the District Court's Order denying its Motion for Preliminary Injunction entered on July 19, 2024 (A1-9). Appellants filed their Notice of Appeal on July 19, 2024 (Dkt. 29). The Court of Appeals has appellate jurisdiction under 28 U.S.C. § 1292(a)(1).

ISSUES PRESENTED

1. Whether Appellants have standing to challenge the Chicago Footprint Ordinance as unconstitutionally vague.

2. Whether Appellants are likely to succeed on the merits of their claim that the Chicago Footprint Ordinance is unconstitutionally vague, in violation of the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

The Democratic National Convention

The 2024 Democratic National Convention (DNC) will take place in Chicago August 19-22, 2024. Verified Complaint (A11 ¶2) Quadrennial presidential nominating conventions like the DNC are virtually synonymous with protests, and for good reason. They provide a rare but crucial opportunity for individuals and organizations to communicate directly to the thousands of party delegates, officials, and operatives gathered in a single city for just a few days. Id.

Despite the importance of national political conventions as occasions for political protesters, the City has taken no affirmative steps to protect First Amendment rights at the Convention—at least, none they have disclosed to the public. A21 ¶50. They have issued no plan for accommodating protesters. Id. Nor have they announced any "free speech zones" near the Convention's primary venues, or any other means to protest within sight and sound of the delegates. Id.

Instead, the City appears determined to keep protesters as far as possible from the DNC and its delegates. For example, as of the date Protesters filed this lawsuit, the City had summarily denied all five parade permit requests filed by various groups (including Bodies Outside) who wanted to protest the DNC, offering them instead an "alternate route" miles from the United Center and invisible to delegate hotels or other sites where delegates and party officials are expected to gather. [1] A17 ¶28. These denials were especially harsh because after receiving a denial letter, applicants are barred from submitting a new application that addresses the specific reasons for denial. *See* Chicago Code Sec. 10-8-330(d) (prohibiting applicants from "submit[ting] more than one application…for a parade substantially similar in theme or units described but requesting an alternate date or route…" and providing that such an applicant "shall not be eligible for such a permit and shall be in violation of" the ordinance).

[1] The City was later compelled to grant a permit to one of these groups because the City's denial was not issued within ten business days as required by ordinance. Compl., A21 ¶49. Three other groups are in separate litigation against the City. *Chicago Alliance against Racist and Political Repression v. City of Chicago*, No. 24-cv-02347 (N.D. Ill 2024).

Further, in February 2024, the Chicago Police Department released a proposed policy for facilitating mass arrests in "response to crowds, protests, and civil disturbances." Id. ¶51. The mass arrest policy stated that "[i]f there is any perceived conflict," it "will take precedence" over other CPD policies, including policies on First Amendment rights, use of force, force reporting, and other accountability measures. Officers began training on the mass arrest policy in March 2024. Id. CPD later issued a revised version of the policy that addressed some of these issues, but advocates have continued to express concerns that the policy will have adverse impacts on protesters. *See State of Illinois v. Chicago*, No. 17-cv-6260 (N.D. Ill 2018), Coalition's Status Report on its Enforcement Motion Concerning CPD's Mass Arrest Policy, Dkt. 1189, June 27, 2024.

The Footprint Ordinance

In April 2024, the Chicago City Council enacted Ordinance 2024-0008373 (the "Footprint Ordinance," or "the Ordinance," A33-36). The Footprint Ordinance authorizes the Chicago Superintendent of Police (the "Superintendent"), in consultation with the United States Secret Service (USSS) and the Chicago Office of Emergency Management and Communications (OEMC), to designate a "security footprint." A34 Sec. II (1). The City has not yet announced the boundaries of the footprint, although it will include areas surrounding the United Center.

Section II of the Ordinance prohibits certain activity within the security footprint during the "Convention Period," which extends from August 17 through August 25. Among other things, it is unlawful to "possess, carry, control, or have

immediate access to any item that poses potential safety hazards, as determined by [the Superintendent], in consultation with the [USSS] and the [OEMC]." A34 Sec. II (2)(iii). A non-exhaustive list of items prohibited within the footprint is attached to the Ordinance. The list includes broad categories such as "pointed objects," "sealed packages," and "thermal" or "metal containers." A4.

The Footprint Ordinance provides no standards or guidelines for adding new items to the list of prohibited objects. Nor does it require any public notice of such additions. Nonetheless, violation of Section II (2)(iii) of the Footprint Ordinance is a strict liability offense. Possession of a prohibited item in the security footprint is unlawful regardless of whether the person knows that they are in the security footprint or that they are carrying a prohibited item.

The Protesters

Plaintiffs-Appellants Andy Thayer Kristi Keorkunian, and Linda Loew (collectively, "Protesters") have a bone to pick with the Democratic Party. In their view, Democrats have failed to pursue an aggressive national agenda to protect the right to bodily autonomy against attacks on reproductive care and LGBTQ+ individuals. Compl., A14 ¶19. Accordingly, Bodies Outside will hold a march to reach Democratic delegates and other party dignitaries at their downtown hotels on the eve of the DNC, August 18, 2024. Individual Protesters will also join protest activities during the DNC proper near one of its primary venues, the United Center. Id., A13-14 ¶¶13-15.

Each of the Protesters typically brings certain items to protests—including some that are arguably covered by the Ordinance's vague list of prohibited items—and they intend to bring those items to DNC protests. A39 ¶ 5; A43 ¶5; A48 ¶ 5. For example, some of the Protesters intend to bring pens and protest buttons of the type that are pinned to clothing (both arguably "pointed"). A39 ¶5(a),(e); A43 ¶ 5(l); A48 ¶ 5(a),(i). Ms. Keorkunian plans to bring an off-the-shelf first-aid kit, which typically includes a sealed packet of gauze (arguably a "sealed package") and a small pair of scissors (arguably "pointed") to cut it with. A43 ¶ 5(a). They will also bring a glucose monitoring kit, which includes lancets (arguably "pointed"). *Id.* ¶ 5(e).

Protesters may also bring additional articles depending on the circumstances of the day, such as their health, the weather, or activities planned for after the protest. A39 ¶ 6; A44 ¶6; A48 ¶ 6. But *any* items that Protesters (or anyone else) intend to bring may at some point be deemed "potential safety hazards" by the Superintendent. For example, the Superintendent may decide that wooden sticks used for carrying signs, naloxone (the active ingredient in Narcan), or umbrellas of *any* kind are potentially hazardous. *Id.* A44 ¶¶ 10-11; A49-50, ¶¶ 9-10.

Procedural History

Protesters filed their Verified Complaint (A1-22), Motion for Preliminary Injunction ("PI Motion," Dkt. 6), and Memorandum in Support (Dkt. 7-1) on May 2, 2024. Plaintiffs did not seek monetary damages but challenged the constitutionality of the City's denial of Bodies Outside's application for a parade permit on August

18, 2024, under the First Amendment (Count I); portions of Chicago's Parade Permit Ordinance, Code Sec. 10-8-330, under the First Amendment (Count II); and the Footprint Ordinance, under the Due Process Clause of the Fourteenth Amendment (Count III). A17-18 ¶¶ 73-91.

On June 26, 2024, the parties agreed that further briefing on the PI Motion was required only as to Count III. Dkt. 27 Tr. 7-8, 11; A2 n.2, A5 n.3. The District Court directed that the City's response brief and Protesters' reply address only the first factor of the preliminary injunction inquiry; that is, whether the plaintiffs were likely to succeed on the merits of their claim that the Footprint Ordinance was unconstitutional. Tr. 18:13-24. The District Court reasoned that if the first factor favored Protesters, it could move on to the remaining factors. Tr. 18:24-19:15. The City filed its response to the PI Motion on July 8, 2024 (Resp. Br., Dkt. 24), and Protesters filed their reply on July 12, 2024. Dkt. 26. On July19, 2024, the District Court denied the PI Motion, holding that Protesters were not likely to succeed in showing that the Ordinance was unconstitutionally vague. A1-9. Protesters filed their notice of appeal the same day. Dkt. 29.

SUMMARY OF ARGUMENT

For a just a few days, in certain places in Chicago, the Democratic National Convention will present a rare opportunity for demonstrators to speak truth directly to power. The Footprint Ordinance sets a "trap for the unwary" at that very time and place by failing to inform demonstrators sufficiently of what items are prohibited there. The Ordinance does not require its list of prohibited items to be

posted online or at the security footprint. It gives the Superintendent unlimited discretion to prohibit additional articles by determining that they "pose potential safety hazards," but does not require him to make those determinations public. It includes no modifying language for broad categories of items like "sealed packages," "thermal or metal containers," or "pointed objects." And it does not require that a person have an unlawful purpose, or even know that an item is prohibited, to be prosecuted for possessing it.

Nor does the Ordinance provide sufficient direction to law enforcement. Not only are police left to decide for themselves whether a bag of gummies is a prohibited "sealed package," they have discretion to determine whether or when to arrest a person with a bag of gummies, order him to leave the security footprint, or allow him simply to dispose of the gummies and go on his way. Because the Footprint Ordinance does not "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited [or] in a manner that does not encourage arbitrary and discriminatory enforcement," it is unconstitutionally vague. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

Protesters Andrew Thayer, Kristi Keorkunian, and Linda Lowe regularly bring objects like pens, blood sugar monitoring kits, protest buttons, and sealed packets of gauze to protests, and they do not know if Ordinance prohibits those items. They bring other objects, like sticks to attach to protest signs, and they do not know if the Superintendent will determine that those items "pose potential safety hazards." Because they risk arrest or prosecution if they go to

demonstrations near the United Center during the DNC, the Ordinance poses an imminent risk of harm that gives them standing to challenge Footprint Ordinance for vagueness on its face.

In holding otherwise, the court below erroneously (1) assumed that if the items Protesters bring to the security footprint turn out to be prohibited, they will simply be asked to discard those items, and will not be arrested or barred from entering the footprint, and (2) disregarded the fact that one of the Protesters intended to bring medically necessary equipment. The District Court further erred by not holding the Ordinance to the especially high standard of clarity the Fourteenth Amendment demands of criminal laws that affect First Amendment rights and lack a *mens rea* requirement. The court also failed to address the fact that the Superintendent could prohibit additional items at will without informing the public.

For those reasons and others set forth below, Protesters ask this Court to reverse the District Court's denial of their motion for preliminary injunction, hold that they are likely to succeed on the merits of their claim that the Footprint Ordinance is unconstitutionally vague, and remand for entry of an injunction.

STANDARD OF REVIEW

On appeal from a ruling on a motion for preliminary injunction, this Court reviews the District Court's "findings of fact for clear error, its legal conclusions *de novo*, and its balancing of the factors for a preliminary injunction for abuse of discretion." *Int'l Ass'n of Fire Fighters, Local 365 v. City of East Chicago*, 56 F.4th

437, 446 (7th Cir. 2022) (citations omitted). "A district court abuses its discretion when it commits a clear error of fact or an error of law." *Lukaszczyk v. Cook Cnty.*, 47 F.4th 587, 598 (7th Cir. 2022) (citations omitted).

This Court should review *de novo* the District Court's legal conclusions that the Footprint Ordinance is constitutional and that Protesters might not have standing to challenge it.

ARGUMENT

I. Plaintiffs have standing to challenge the Footprint Ordinance.

Protesters intend to protest during the DNC within the security footprint designated by the Superintendent, and they intend to carry items with them that may be prohibited in that zone. *See generally* A38-50. Because of the vagueness of the Ordinance, they cannot attend demonstrations within the security footprint without risking arrest and prosecution. Therefore, Protesters have a "certainly impending" injury-in-fact sufficient to support their standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citations omitted). The District Court's "hesitan[ce]"[2] to recognize Protesters' standing is based on assumptions about Ordinance's enforcement mechanisms that do not appear in the record or the Ordinance itself.

The gravamen of a vagueness challenge is that ordinary people cannot discern the conduct the law prohibits. Accordingly, Protesters need not—because

[2] The District Court did not expressly rule on standing. It described the issue as a "close call" on which it was "hesitant" to find standing, but it nonetheless addressed the merits "for the sake of efficiently resolving this case prior to the Convention." A5.

they *cannot*—establish with certainty that their intended conduct will violate the Footprint Ordinance. Rather, "[t]o suffice for standing, and to avoid confusing standing with the merits, plaintiffs' intended course of conduct need only be 'arguably' affected by constitutional interests, and 'arguably' proscribed by the challenged statute." *Brown v. Kemp*, 86 F.4th 745, 762 (7th Cir. 2023) (quoting *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 299 (1979)).

As they habitually do, Protesters intend to bring a variety of items with them as they protest the DNC. Some of these items, arguably, are prohibited by the Ordinance. A39 ¶ 5; A43 ¶5; A48 ¶ 5. For example, some of the Protesters intend to bring pens and protest buttons of the type that are pinned to clothing (both arguably "pointed"). A39 ¶5(a),(e); A43 ¶ 5(l); A48 ¶ 5(a),(i). Ms. Keorkunian plans to bring an off-the-shelf first-aid kit, which typically includes a sealed packet of gauze (arguably a "sealed package") and a small pair of scissors (arguably "pointed") to cut it with. A43 ¶ 5(a). They will also bring a glucose monitoring kit, which includes lancets (arguably "pointed"). *Id.* ¶ 5(e).

More broadly, the Superintendent has unlimited authority to determine whether *any* item—including items that Protesters intend to bring to DNC protests— "poses a *potential* safety hazard." *See* A39 ¶ 9; A44 ¶¶ 10-11; A48-49 ¶¶ 9-10. As discussed in detail in Part II.A, ordinary people cannot predict the determinations that the Superintendent may make, and the Ordinance has no provisions to ensure that the public learns of them. Thus, Protesters face imminent harm: They cannot attend protests near the United Center during the DNC

carrying any item without risking arrest, prosecution, and up to six months of incarceration. *See* A34, Sec. II (3).

Notably, the concrete and particularized injury giving rise to standing need not be *actual* enforcement of the challenged ordinance. For example, in *Cramp v. Bd. of Pub. Instruction of Orange Cnty., Fla.*, 368 U.S. 278, 283-5 (1961), the Supreme Court rejected the State's argument that a teacher lacked standing to challenge a statutorily required oath disclaiming support of the Communist Party because his complaint alleged that he had not and would not support the Communist Party. Even though the teacher believed that he could truthfully sign the oath, "the very vice of which he complains is that the language of the oath is so vague and indefinite that others could with reason interpret it differently." *Id.* at 284. "[A]ll who are compelled to execute an unconstitutionally vague and indefinite oath may be exposed" to the risk of prosecution for perjury based on someone else's interpretation of its language. *Id.* The teacher would "be subjected to these hazards to the same degree as other public employees required to take the oath." *Id.* In other words, the teacher did not need to show that he was in immediate danger of prosecution. Rather, he was injured because to keep his job, he had to subject himself to this unacceptable risk.

Likewise, to protest near the United Center during the DNC, Protesters must subject themselves to the risk that a police officer will decide that one of their possessions is "pointed" or a "sealed package," or that the Superintendent will decide that it is a "potential safety hazard." That injury is as "concrete" and

"imminent" as the DNC itself. That injury is directly attributable to the Ordinance and would be redressed by an injunction barring Defendants from enforcing it or requiring them to take steps to clarify its prohibitions. Protesters have standing to request that relief.

The District Court's doubts about Protesters' standing are based on its unwarranted assumption that Protesters "are unlikely to face punishment" if they "show up to the protests with pens, first aid kits, and protest buttons," but instead "will be asked to discard certain items . . . before they are allowed into the Security Footprint." Order at 4. But nothing in the Ordinance indicates that there will be checkpoints at the entry to the footprint or an opportunity to discard prohibited items. Indeed, this lack of enforcement information was one reason for Protesters' claim of vagueness. Mem. Supp. PI, Dkt. 9 at 21; Reply, Dkt. 26 at 13. In response to that argument, the City did not attempt to clarify the enforcement mechanisms, instead claiming that the entire issue was irrelevant. Resp. Br. at 14-15 and n.7 Even if the District Court were correct that Protesters would be able to avoid arrest by discarding banned items, such a solution would not be feasible for, say, Ms. Keorkunian, who has diabetes and therefore brings a glucose monitoring kit to protests. Likewise, the Superintendent may ban additional items that Protesters need for health reasons, or that are simply too expensive to be discarded easily. In any case, the District Court should not have assumed an enforcement regime that the City conspicuously declined to affirm when considering Protesters' standing.

II. The Chicago Footprint Ordinance is unconstitutionally vague.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A law is unconstitutionally vague if it does not "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly" or if it fails to "provide explicit standards for those who apply them" sufficient to prevent arbitrary and discriminatory enforcement. *Id.* The Footprint fails on both counts because an ordinary person has no way to know what objects the Superintendent may determine to be "potential safety hazards" and because the existing list of prohibited objects contain categories of unascertainable scope.

A. This Court should require a particularly high degree of clarity from the Footprint Ordinance.

When applying the vagueness standards, "[t]he degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). For several reasons, the Footprint Ordinance is the type of law that requires a high degree of clarity, and the District Court erred by not holding the Footprint Ordinance to that standard.

First, the Ordinance implicates core First Amendment interests in free speech and peaceable assembly, so "the vagueness doctrine demands a greater degree of specificity than in other contexts." *Brown v. Kemp,* 86 F.4th 745, 772 (7th

Cir. 2023), quoting *Smith v. Goguen,* 415 U.S. 566 (1974) (alteration omitted). *See also Bell v. Keating,* 697 F.3d 445, 455 (7th Cir. 2012). In *Bell*, the challenged disorderly conduct ordinance "implicate[d] speech and assembly rights" because the plaintiff alleged that "one cannot know what conduct triggers [the ordinance]," so "he must abstain from all protests unless he wishes to risk prosecution." *Id.* Likewise, one cannot know what items have been or may be determined "potential safety hazards," so Protesters may attend demonstrations during the DNC near the United Center only at the risk of prosecution under the Footprint Ordinance.

Second, the Ordinance prescribes criminal rather than civil penalties. The Supreme Court has "greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." *Village of Hoffman Estates*, 455 U.S. at 498–99. *accord*, *Whatley v. Zatecky*, 833 F.3d 762, 777 (7th Cir. 2016). Each violation of the Footprint Ordinance is punishable by a fine of up to $500 and up to six months of imprisonment. Compl. Ex. P, Sec. II (3).

Third, the Ordinance has no *mens rea* requirement; it is a strict liability offense. "[A] scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Flipside*, 455 U.S. at 499. *See also United States v. Williams*, 553 U.S. 285, 293- 294 (2008); *United States v. Pacilio*, 85 F.4th 450, 459 (7th Cir. 2023), *cert. denied,* 144 S. Ct. 1033 (2024).

Fourth, the Ordinance "makes criminal activities which by modern standards are normally innocent," such as walking on a public sidewalk with a pack of cigarettes or a can of Coke. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 163 (1972). "Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained." *Winters v. New York*, 333 U.S. 507, 520 (1948).

To summarize, the Footprint Ordinance imposes up to six months of incarceration for innocently carrying everyday objects while protesting near the United Center during the DNC. The Constitution demands from such an ordinance the highest degree of clarity about what objects are prohibited.

B. The Footprint Ordinance is unconstitutionally vague because it fails to give sufficient notice of what conduct is prohibited.

A statute is unconstitutionally vague if it does not "give people fair notice of what conduct is prohibited so that they may conduct themselves within the law's bounds." *Brown v. Kemp*, 86 F.4th 745, 772 (7th Cir. 2023). Such laws "may trap the innocent by not providing fair warning." *Hynes*, 425 U.S. at 622, *quoting Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." *City of Chicago v. Morales*, 527 U.S. 41, 58 (1999) (internal quotation marks and citation omitted). The Footprint Ordinance fails this standard because an ordinary person can only guess which items the Superintendent might deem "potential safety hazards" or even which are encompassed by the list of items *already* deemed "potential safety hazards."

1. **The Footprint Ordinance's prohibition of any item the Superintendent determines to be a potential safety hazard does not give fair notice of what conduct is prohibited.**

The Footprint Ordinance prohibits any person within the security footprint during the Convention Period to have "any item that the poses potential safety hazards, as determined by the Chicago Superintendent of Police, in consultation with the [USSS] and the [OEMC], including, but not limited to, any item listed in Exhibit A to this Ordinance . . ." A34 Sec. II(2)(iii). The Ordinance does not define, limit, or otherwise constrain the items the Superintendent may designate. It prohibits those objects regardless of whether someone is carrying an item for a particular purpose, or whether a person even knows that the item is a potential safety hazard. The Ordinance allows the Superintendent to determine that an object "poses potential safety hazards" at any time up to and during the Convention Period. It does *not* require him to make those determinations public. Thus, people "of common intelligence must necessarily guess at" which items, in addition to those listed in Exhibit A, the Superintendent has determined or will determine pose potential safety hazards. *Bell v. Keating*, 697 F.3d 445, 462 (7th Cir. 2012), quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). Protesters are aware of no case that has upheld an ordinance against a vagueness challenge that allows an official to make rules without telling regulated individuals what the rules are, and they urge this Court not to become the first.

The District Court's conclusion that the law is not vague because "hazard" is an everyday word that everyone understands is wrong for several reasons. First, the

ordinance does not prohibit "safety hazards" but objects that the Superintendent *determines* to pose "*potential* safety hazards." Presumably, the Superintendent is empowered to make these determinations because he and the consulting agencies have special knowledge and expertise they can apply to developing facts on the ground to identify items that have the potential to be hazardous. But the public does not have access to that information, and a general understanding of the word "hazard" does not allow them to predict what items the Superintendent may designate as such.

Further, the meaning of the word "hazard" depends entirely on context. The "hazard" posed by an object may depend on where it is, how it is used, and by whom. It may pose a hazard of death, injury, illness, property damage, or inconvenience. It may be extremely likely to cause harm at any time, or it may be hazardous only under narrow circumstances. By itself, the word "hazard" does constrain the universe of objects that are prohibited within the security footprint. The District Court cites cases in which laws using the word "hazardous" have been upheld (A6), but, unlike the Footprint Ordinance, those laws do not use the word in a vacuum.

For example, in *United States v. Wyatt*, the court upheld a statute prohibiting the use of a "hazardous or injurious device on Federal land" with "intent to obstruct or harass the harvesting of timber." 408 F.3d 1257, 1260-61 (9th Cir. 2005). The statute defined "hazardous or injurious device" as "a device, which when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or

placement." *See Wyatt,* 408 F.3d at 1261. Thus, the statute defined hazardous devices according to (1) the conditions under which it was dangerous ("assembled or placed"), (2) the type of damage it could inflict, and (3) the means by which it could inflict that damage. The definition also had a list of illustrative examples with a common theme: they could be used as booby-traps triggered by people cutting down trees. *See id.* at 1262 (discussing 18 U.S.C. § 1864(d)(3)). Finally, the statute applied only on federal lands, and with a criminal *mens rea*. *See id.* at 1261 (the statute "does not simply prohibit the use of 'hazardous or injurious device,' but with the intent to obstruct or harass the harvesting of timber"). In short, compared to the Footprint Ordinance, the statute is virtually a master class in precise legislative drafting.

Similarly, in *Jake's Fireworks Inc. v. Acosta*, 893 F.3d 1248, 1258 (10th Cir. 2018) upheld an OSHA regulation providing that "[n]o person shall store, handle, or transport *explosives* or *blasting agents* when such *storage*, *handling*, and *transportation* of explosives or blasting agents constitutes an *undue* hazard *to life*." (emphasis added). The italicized words significantly narrow the context in which "hazard" is to be understood. Moreover, the regulation was not written for the general public, but for a "reasonable person responsible for employee safety," who, in the case at hand, worked in a fireworks factory—someone who should know the meaning of "hazard" in the specific context presented.

Nor does the list of prohibited items in Exhibit A to the Ordinance clarify what *additional* items the Superintendent might determine to be hazardous,

because they do not have any common feature that describes the type or level of hazard that the Ordinance means to prescribe. In this way, the Footprint Ordinance resembles the provision invalidated in *Johnson v. U.S.*, which defined "violent felony" warranting a longer sentence to include "burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a *serious potential risk* of physical injury to another." 576 U.S. 591, 596, quoting 18 U.S.C. § 924(e)(2)(B)(ii) (emphasis added). The Court observed that the residual clause combined "indeterminacy about how to measure the risk posed by a crime with indeterminacy about how much risk it takes for the crime to qualify as a violent felony" *Id.* at 598. The enumerated crimes did not resolve that uncertainty because they were themselves "far from clear in respect to the degree of risk each poses." *Id.* (citation omitted).

Likewise, in the Footprint Ordinance, the phrase "potential safety hazard" does not define the type or degree of hazard posed by an object (it does not even include a word like "serious," as the statute in *Johnson* did), and the list in Exhibit A does not clarify matters. Ordinary people may be surprised to learn that items like laptops, sealed packages, balloons, thermal containers, and folding chairs are "potential safety hazards" at all. They cannot be expected to analogize from such a disparate list to what *other* objects the Superintendent may determine to be "potential safety hazards."

2. The Footprint Ordinance's prohibition of items listed in Exhibit A does not give fair notice of what conduct is prohibited.

Exhibit A to the Ordinance comprises a list of items "that pose[] potential safety hazards, as [already] determined by the" Superintendent. A34 Sec. II(2)(iii). Some of these items are not specific objects, but broad categories of objects of uncertain scope, such as "[s]ealed packages," "[t]hermal or [m]etal [c]ontainers," and "pointed objects, including knives of any kind." A36. Because the ordinance contains no definitions or other limits to constrain the breadth of these categories, they are unconstitutionally vague.

As explained earlier, Protesters plan to bring items to protests that may qualify as "pointed objects" or "sealed packages." While the District Court found that the Protesters' concern that pens, first-aid kits, or protest buttons might be prohibited "pointed objects" was "well beyond the pale of any reasonable interpretation of the Ordinance," it did not explain why those items should *not* be included. For example, the District Court observed that the United States Supreme Court prohibits visitors to carry "knives of any size and any pointed objects," but the Court's website *expressly* notes that "[p]ens and pencils are permitted." A7, citing https://www.supremecourt.gov/visiting/prohibited-items.aspx. *See also* U.S. Capitol Visitor Center, *Prohibited Items*, https://www.visitthecapitol.gov/visit/know-before-you-go/prohibited-items (last visited July 12, 2024) (prohibiting "[a]ny pointed object, e.g. knitting needles and letter openers (*Pens and pencils are permitted*.")) If it were "beyond the pale" to believe that "pointed objects" might include pens and

pencils, these institutions would not need such provisos. Nor does it defy common sense to worry that a protest button with a pin as long as three to five inches capable of taking out an eye if the pin is bent back, or a medical lancet designed to draw blood, might be prohibited pointed objects. Indeed, the City has never denied that pencils, epi-pens, or any other pointed object is within the ambit of the Ordinance, and it was error for the District Court to assume they are not.[3]

More generally, lists of items prohibited at the Supreme Court and similar secure locations are a poor basis for comparison. Unlike Exhibit A to the Footprint Ordinance, those lists are available on websites that individuals may consult before they leave their homes. Such venues also typically post the list at the entrance and have employees available to answer questions about what is prohibited. And they apply to the types of buildings and enclosed areas where ordinary people expect special security measures, not to public streets and sidewalks that "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939).

[3] The District Court also suggests that if Protesters are in fact arrested and charged with violating the Footprint Ordinance, they can raise an as-applied challenge. A7 n.4. But the Supreme Court has never required a person whose First Amendment rights are threatened by a vague law to subject himself to potential prosecution before challenging it. *See Brown*, 86 F.4th 745 (listing cases). Otherwise, "the contours of regulation would have to be hammered out case by case—and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of regulation." *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). Such a solution is particularly inapt here, where the Ordinance will have expired long before its contours are hammered out through individual prosecutions.

Further, the objects that Protesters intend to bring to DNC demonstrations are just a few examples of the breadth of the categories found in Exhibit A. Sealed packages may include unopened mail, cold packs for first aid, or packets of gauze, pretzels, tampons, baby wipes, or virtually any other commercially packed product. Thermal containers may include lunch boxes, "koozies," and insulated breast milk containers. Metal containers may include a tin of Altoids mints, a Coke can, or an oxygen tank for someone with a medical disorder. These are not mere "edge cases"; there is no end to the collection of items people might bring to a protest that might fall into one of these categories. Each category could be substantially clarified with language referring to the size, weight, function, capacity for injury, and other such characteristics. But the Ordinance eschews such clarity.

C. The Footprint Ordinance is unconstitutionally vague because it does not include sufficient standards for law enforcement.

The Ordinance is also unconstitutionally vague because it does not "establish minimal guidelines to govern law enforcement." *Morales*, 427 U.S. at 60. Police officers are no better equipped than any ordinary person to know whether a pen is prohibited as "pointed" or a tin of Altoids mints as a "metal container" or a packet of gummies as a "sealed package." But possession of such common and innocent items may provide a convenient hook for an officer to arrest someone who seems suspicious or annoying.

The broad and flexible meaning of these categories and the lack of guidelines to constrain official discretion make the Footprint Ordinance ripe for arbitrary enforcement. Despite Defendant's suggestion to the contrary, Protesters need not

produce "actual evidence" that police will enforce the Ordinance in such a manner. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051 (1991) ("The question is not whether discriminatory enforcement occurred here, and we assume it did not, but whether the Rule is so imprecise that discriminatory enforcement is a real possibility.")

Nor does the Ordinance offer standards for the *manner* of enforcement. Contrary to the District Court's assumption, an officer may arrest one person on the spot for having, say, a soda can, but simply direct another person to dispose of the can. Clear enforcement standards are one way to constrain the discretion that a vaguely worded ordinance may otherwise afford officers, just as "a *scienter* requirement in a statute alleviates vagueness concerns." *McFadden v. United States*, 576 U.S. 186, 197 (2015) (alterations omitted).

Finally, the Ordinance delegates unfettered discretion to the Superintendent to determine which items "pose[] potential safety hazards," Ex. P Sec. II (2) (iii), unconstrained by standards, criteria, or procedures. The Ordinance does not, for example, prevent the Superintendent from choosing to prohibit only items that are associated with particular religious or political views. Again, the question is not whether the Superintendent *has* exercised or *will* exercise this discretion in a discriminatory fashion (and Protesters assume he has not and will not), but whether the statutory language makes it a "real possibility." It does.

To summarize, the Footprint Ordinance is unconstitutionally vague because (1) it is a criminal law with no *mens rea* requirement that covers a great deal of

otherwise innocent conduct and implicates First Amendment rights; (2) the Superintendent may prohibit new items at any time in his complete discretion, without making those items public; (3) categories in Exhibit A to the Ordinance contain a vast array of undifferentiated items such that neither ordinary people nor law enforcement officers know what is prohibited; and (4) the Ordinance lacks enforcement standards.

CONCLUSION

For the foregoing reasons, Protesters respectfully request the Court to reverse the District Court's denial of their Motion for Preliminary Injunction.

Respectfully submitted,

Dated: July 26, 2024

s/ *Rebecca K. Glenberg*

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 32(c)

As required by Fed. R. A P. 32(g), I certify that the Joint Brief of Plaintiffs-Appellants complies with the type-volume limitation for proportionally spaces briefs. It contains 6170 words, excluding the parts of the brief exempted by Fed. R. A P. 32(f).

s/ *Rebecca Glenberg*

REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BODIES OUTSIDE OF UNJUST LAWS: COALITION FOR REPRODUCTIVE JUSTICE & LGBTQ+ LIBERATION, et al.,

Plaintiffs,

v.

CITY OF CHICAGO, et al.,

Defendants.

No. 24 CV 3563

Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Plaintiffs move to enjoin enforcement of Chicago Ordinance 2024-0008373 related to the upcoming Democratic National Convention. R. 6. For the following reasons, that motion is denied.

Background

In anticipation of hosting the Democratic National Convention in August 2024, the City of Chicago enacted Ordinance 2024-0008373 (the "Ordinance"). R. 1-1 at 314–17. In relevant part, the Ordinance makes it unlawful for people to bring certain items into the "Security Footprint," a protected area around the Convention sites.[1] *Id.* at 315. Within the Security Footprint, people may not possess "any item that poses potential safety hazards . . . including, but not limited to, any item listed in Exhibit A." *Id.* Exhibit A lists items such as laptops, sealed packages, drones, firearms, ammunition, tents, "[a]ny pointed object(s) including knives of any kind," and "Any

[1] The United Center and McCormick Place.

Other Items Determined by Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, to be Potential Safety Hazards." *Id.* at 317.

During the Convention, Plaintiffs intend to enter the Security Footprint area "to participate in marches or demonstrations" in exercise of their First Amendment rights. R. 1 ¶ 13. Plaintiffs contend that the Ordinance is unconstitutionally vague in violation of their Fourteenth Amendment due process rights and that such vagueness will have a chilling effect on their First Amendment rights. R. 9 at 24–28. Plaintiffs thus move to enjoin enforcement of the Ordinance. R. 6.[2] For the reasons stated below, Plaintiffs' motion is denied.

Discussion

A plaintiff seeking a preliminary injunction must make a "clear showing" that she is likely to establish each element of standing. *Murthy v. Missouri*, 144 S. Ct. 1972, 1986 (2024) (citations omitted). She must also establish each element of a preliminary injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (including that the plaintiff is "likely to succeed on the merits"). Here, the Court requested that the parties focus their briefing on whether Plaintiffs could establish a likelihood of success on the merits. As discussed below, whether Plaintiffs have standing is a close call. Regardless, Plaintiffs' claim fails because they cannot establish a likelihood of success on the merits.

[2] Plaintiffs raised additional issues in their motion for a preliminary injunction. R. 6. The parties resolved these other issues by way of settlement and the constitutionality of the Ordinance is the sole remaining issue.

I. Standing

Injury in fact is a necessary element for standing and to obtain prospective relief such as an injunction, a plaintiff must establish a "sufficient likelihood" that a future injury will occur. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). The Supreme Court has "repeatedly reiterated" that the future injury must be "certainly impending," and that "allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citations omitted). To establish a certainly impending future injury, a plaintiff must present evidence of specific facts, such as by affidavit, rather than general factual allegations of injury. *Speech First, Inc. v. Killeen*, 968 F.3d 628, 638 (7th Cir. 2020).

Here, Plaintiffs allege future injury under a vagueness claim. "A vagueness claim alleges that, as written, [a] law either fails to provide definite notice to individuals regarding what behavior is criminalized or invites arbitrary and discriminatory enforcement—or both." *Bell v. Keating*, 697 F.3d 445, 455 (7th Cir. 2012). "Although it derives from the Fourteenth Amendment, a statute that is vague may implicate a plaintiff's First Amendment rights." *Id.* When "an imprecise law implicates speech and assembly rights," a plaintiff may "facially challenge a statute as void for vagueness." *Id.* In this context, under a vagueness claim, a plaintiff has standing when she can establish a First Amendment "chill" and "consequential injury." *See Penny Saver Publications, Inc. v. Vill. of Hazel Crest*, 905 F.2d 150, 155 n.2 (7th Cir. 1990).

As stated above, Plaintiffs intend to participate in marches or demonstrations within the Security Footprint during the Convention, and they argue that the vagueness of the Ordinance will have a chilling effect on their ability to exercise these rights. Plaintiffs provide affidavits stating, for example, that they intend to bring pens, first aid kits containing scissors, and "protest buttons that attach with a pin in the back" into the Security Footprint. R. 26-1 ¶ 8; R. 26-2 ¶ 8; R. 26-3 ¶ 8. Plaintiffs claim to not know whether these items would be prohibited under the Ordinance as "pointed objects." *Id.* According to Plaintiffs, due to this uncertainty, they do not know how to participate in the protests without violating the law. *See* R. 26 at 6 ("Protesters here face [a] dilemma: avoid protests near the United Center during the [Convention] or else risk punishment [under the Ordinance].").

The Court is hesitant to find that Plaintiffs have standing based on these facts. Simply put, if Plaintiffs show up to the protests with pens, first aid kits, and protest buttons, they are unlikely to face punishment. It is likely that Plaintiffs will be asked to discard certain items (such as the scissors) before they are allowed entry into the Security Footprint, just as happens at airports on a daily basis. This would not constitute a First Amendment injury as Plaintiffs would, upon discarding such innocuous items, likely be allowed entry into the Security Footprint with the subsequent ability to exercise their First Amendment rights. There does not appear to be a "certainly impending" future injury.

That said, Plaintiffs have minimally articulated a theory of injury consistent with the general principles of a vagueness claim. *See Penny Saver Publications, Inc.*,

905 F.2d at 155 (standing conferred where "[b]ecause of this uncertainty, advertisers were apparently chilled in exercise the exercise of their first amendment rights"). Additionally, the Convention begins in less than one month and the Court anticipates that Plaintiffs may appeal this decision.[3] The Court will address their motion on the merits for the sake of efficiently resolving this case prior to the Convention.

II. Likelihood of Success on the Merits

First, Plaintiffs argue that the Ordinance is vague because it "does not provide sufficient notice of the prohibited conduct." R. 26 at 8–12. On this point, the Constitution requires that the Ordinance have a "core of understandable meaning." *Trustees of Indiana Univ. v. Curry*, 918 F.3d 537, 540 (7th Cir. 2019). Some "uncertainty at the margins does not condemn a statute." *Id.* Rather, the uncertainty must be "so pervasive that most of a law's potential applications are impossible to evaluate." *Id.* The "inevitable questions at the statutory margin" should be left to "future adjudication." *Id.* at 541.

Plaintiffs take issue with the phrase "potential safety hazard" and argue that the word "hazard" is not sufficiently defined. R. 26 at 8. But words are sufficiently defined where an ordinary person would "use and understand" those words in "normal life." *Curry*, 918 F.3d at 540 ("Even a protean word such as 'reasonable' has enough of a core to allow its use in situations where rights to speak are at issue."). So

[3] The Ordinance was enacted on April 17, 2024. R. 1 ¶ 63. Plaintiffs filed this case and moved for a preliminary injunction on May 2, 2024. R. 1; R. 6. Between May 2 and June 26, the parties engaged in settlement negotiations through which they resolved two of the three issues set forth in Plaintiffs' motion. *See* R. 6. On June 26, 2024 when the parties indicated they would be unable to resolve the final issue regarding the Ordinance, the Court set an expedited briefing schedule. R. 23.

too here, an ordinary person understands what a "hazard" is in the context of their everyday life. What's more, the Ordinance supplements and clarifies the phrase "potential safety hazard" with a detailed list of prohibited items set forth in Exhibit A. As Defendants point out, this list is similar to prohibitions commonly used and understood across American life such as when people enter sports stadiums, courthouses, and government buildings. *See* R. 24 at 10 (citing lists of prohibited items for Soldier Field, the Dirksen Federal Building, and the U.S. Capitol Building). Indeed, courts have previously upheld similar uses of the word "hazard" as constitutional. *See, e.g.*, *Jake's Fireworks Inc. v. Acosta*, 893 F.3d 1248, 1258 (10th Cir. 2018) ("For the standard to be clear, it need not spell out all situations where activity is hazardous."); *United States v. Wyatt*, 408 F.3d 1257, 1260–62 (9th Cir. 2005) (the phrase "hazardous and injurious device," accompanied by a list of examples, was not void for vagueness).

Regarding Exhibit A, Plaintiffs argue the specific prohibition on "any pointed object[s] including knives of any kind" is overbroad because it includes "innocent" pointed objects such as Epi-pens and pencils. R. 9 at 25. Specifically, Plaintiffs intend to bring pens, first aid kits containing scissors, and "protest buttons that attach with a pin in the back" into the Security Footprint and claim to not know whether the Ordinance prohibits such items. R. 26-1 ¶ 8; R. 26-2 ¶ 8; R. 26-3 ¶ 8. Plaintiffs' argument that a protestor would be punished for carrying items such as pens, first aid kits, and protest buttons is well beyond the pale of any reasonable interpretation of the Ordinance. *See Anderson v. Milwaukee Cnty.*, 433 F.3d 975, 978 (7th Cir. 2006)

("Common sense must not be and should not be suspended when judging the constitutionality of a rule or statute."). As Defendants point out, this particular phrasing is commonplace and well-understood by ordinary Americans. The Supreme Court of the United States, for example, uses similar language to prohibit "knives of any size and any pointed objects." *See* R. 24 at 10 (citing https://www.supremecourt.gov/visiting/prohibited-items.aspx). Ordinary people understand that items such as protest buttons do not pose safety hazards. At best, this argument identifies some "uncertainty at the margins" best left for an as-applied challenge in future adjudication.[4] *Curry*, 918 F.3d at 540.

Ultimately, the use of the phrase "potential safety hazard" coupled with the list of examples in Exhibit A provides "sufficient definiteness that ordinary people can understand what conduct is prohibited." *Skilling v. United States*, 561 U.S. 358, 402 (2010).

Second, Plaintiffs argue that the Ordinance is vague because it "does not provide sufficient guidance to prevent arbitrary or discriminatory enforcement." R. 26 at 12–13. On this point, the Constitution requires that the Ordinance "establish minimal guidelines to govern law enforcement." *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (citations omitted). An ordinance fails to establish minimal guidelines when it "vests virtually complete discretion in the hands of the police to determine

[4] As discussed above, if a person is stopped for carrying an item such as pen, first aid kit, or protest button, that person will likely be asked to discard the item and then still be allowed entry into Security Footprint with the subsequent ability to exercise her rights under First Amendment. In the unlikely event that a person carrying these items is charged with violating the Ordinance and then prohibited from entering the Security Footprint, such a case would allow for an as-applied challenge.

whether a suspect has satisfied the statute." *Id.* Put another way, an ordinance may not "entrust[] lawmaking to the moment-to-moment judgment of the policeman on his beat." *City of Chicago v. Morales*, 527 U.S. 41, 60 (1999) (citations omitted).

In raising this argument, Plaintiffs rely primarily on *Morales*. R. 26 at 12–13. In *Morales*, the City of Chicago passed an ordinance providing that if a group of two or more people were present in a "public place," and if a police officer reasonably believed that at least one person was a "criminal street gang member" and that the group was "loitering" with "no apparent purpose," then the officer was required to order the group to "disperse." 527 U.S. at 47. The ordinance then made it a criminal offense to decline to obey the order. *Id.* The ordinance allowed officers broad discretion to infer whether a person was in a criminal street gang and whether that person was loitering. *Id.* at 60. The ordinance placed "too much discretion" in the hands of individual officers and thus failed to provide sufficient guidance to prevent arbitrary enforcement. *Id.* at 64.

In contrast to the ordinance in *Morales*, Ordinance 2024-0008373 provides far more guidance to law enforcement officers. The prohibited conduct in Ordinance 2024-0008373 is clearly and sufficiently defined as described above. And, critically, there is no discretion in its application—the Ordinance applies to "any person" who enters the Security Footprint "other than governmental employees in the performance of their duties, or persons duly issued a permit that specifically authorizes the [conduct]". R. 1-1 at 315. It is not applied against any particular person because of the content of their speech. Additionally, the Ordinance does not broadly

apply across the entire City of Chicago. The Security Footprint regulations will be in place for just ten days (August 17, 2024 to August 26, 2024) and will be enforced only in the limited area of the Security Footprint. *Id.* at 314–15. For these reasons, the Ordinance establishes clearly defined "minimal guidelines to govern law enforcement" as required by the Constitution. *Kolender*, 461 U.S. at 358. Plaintiffs are not likely to succeed on the merits of their claim.

Conclusion

For the reasons stated above, Plaintiffs' motion to enjoin enforcement of the Ordinance is denied.

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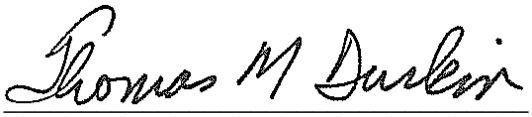

Honorable Thomas M. Durkin
United States District Judge

DATED: July 19, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BODIES OUTSIDE OF UNJUST LAWS: COALITION FOR REPRODUCTIVE JUSTICE & LGBTQ+ LIBERATION, ANDREW THAYER, KRISTI KEORKUNIAN, and LINDA LOEW,	)	No. _____
Plaintiffs,	)	
v.	)	
CITY OF CHICAGO, TOM CARNEY in his official capacity as Commissioner of the Chicago Department of Transportation, and LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department.	)	
Defendants.	)	

VERIFIED COMPLAINT

Plaintiffs Bodies Outside of Unjust Laws: Coalition for Reproductive Justice & LGBTQ+ Liberation ("Bodies Outside of Unjust Laws" or "Bodies Outside"), Andrew Thayer, Kristi Keorkunian, and Linda Loew, bring this Complaint against the City of Chicago, Tom Carney, in his official capacity of Commissioner of the Department of Transportation, and Larry Snelling, in his official capacity as Superintendent of the Chicago Police Department.

INTRODUCTION

1. Plaintiff Bodies Outside of Unjust Laws has an important message for the Democratic Party: despite its branding as a champion of reproductive rights and an ally to the LGBTQ+ community, the party has not done enough to protect the right to bodily autonomy from a devastating series of attacks in recent years.

2. Bodies Outside and its members have just one historic opportunity to present their demands to some of the most influential Democrats in the country, the 2024 Democratic National Convention ("the Convention" or "DNC"), to be held in Chicago from August 19 to 22, 2024. Thousands of delegates from across the country and journalists from around the world will converge on the city. Political conventions have typically been the site of mass protests because they provide a singular occasion to send a message to the national parties and the national and international media.

3. Nonetheless, the City of Chicago has released no plans for accommodating large-scale protests during the Convention.

4. To the contrary, Defendants have exploited Chicago's constitutionally defective parade permit ordinance to summarily deny a permit to Bodies Outside and other groups who wish to march during the convention. Instead, they have offered Bodies Outside and other applicants a permit to march along the same alternative route—one that is virtually invisible to the protesters' intended audience. The message is clear: Defendants will tolerate marches during the Convention only if they are nowhere near the Convention or its delegates.

5. The ostensible grounds for denying all of the permits were the proposed marches' impact on traffic and a lack of adequate law enforcement resources before and during the Convention. But those rationales were supported more by supposition than evidence, as testimony at an administrative hearing on Bodies Outside's application made clear. Indeed, at the time Defendants denied Bodies Outside's permit the Defendants lacked key information, such as how many law enforcement officers would be available during the Convention.

6. Moreover, the denial of Convention-related parade permits may create more traffic problems and divert more police resources than granting them would. The purpose of

permit requirements is to give officials advance knowledge of where protesters will be and when so that they can plan to have appropriate resources in place. A permit also ensures that officials have contact information for one or more protest organizers with whom they can coordinate before and during the permitted event. The City of Chicago has forgone that planning opportunity, opting by default to respond to protests wherever and however they arise.

7. In addition to denying permits, the City has enacted a new ordinance prohibiting an indeterminate list of objects within an undefined "security footprint" on the days before, during, and after the Convention.

8. This is a lawsuit for declaratory and injunctive relief under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution challenging the Defendants' denial of Plaintiffs' permit application and the facial and as-applied constitutionality of Chicago's ordinances governing parade permits and prohibited items within the security footprint.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and §1343. Plaintiffs seek redress for violations of their constitutional and civil rights granted under First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983.

10. This Court is authorized to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

11. Venue in this Court is appropriate under 28 U.S.C. § 1391(b) because Defendants reside in, and all transactions and occurrences giving rise to this matter arose in, the Eastern Division of the Northern District of Illinois.

PARTIES

12. Plaintiff Bodies Outside of Unjust Laws is an unincorporated coalition of organizations and individuals formed to demand a federal response to a wave of attacks on bodily autonomy. It demands national legislation to expand access to abortion, support families, and defend the rights of LGBTQ+ people. After its planned march on August 18, 2024, it intends to continue holding marches and other demonstrations on those issues in Chicago.

13. Plaintiff Andrew Thayer is a Chicago resident and a member of Bodies Outside of Unjust Laws. He is a decades-long activist who has organized and participated in countless marches and demonstrations in Chicago and expects to continue doing so in the future. In addition to participating in the Bodies Outside march on August 18, 2024, he intends to participate in marches or demonstrations near the United Center on one or more days during the Democratic National Convention.

14. Plaintiff Kristi Keorkunian is a Chicago resident and a member of Bodies Outside Unjust Laws. They are the co-founder of Stop Trans Genocide Chicago, a grassroots organization dedicated to fighting to uphold and expand the rights and resources of gender-variant and gender-expansive youth and adults, including reproductive care, family planning, and abortion access. In addition to participating in Bodies Outside's march on August 18, 2024, they intend to co-organize and participate in marches and demonstrations near the United Center on one or more days during the Democratic National Convention and to continue organizing and participating in protests in Chicago in the future.

15. Plaintiff Linda Loew is a Chicago resident and a member of Bodies Outside of Unjust Laws. She has actively organized and participated in countless marches and demonstrations in Chicago, with particular emphasis on reproductive justice and labor rights. She

expects to continue as an active participant in protests in the future, including in one or more marches or demonstrations during the Democratic National Convention.

16. Defendant City of Chicago ("the City" or "Chicago" or "Defendant") is an Illinois municipal corporation.

17. Defendant Tom Carney ("Commissioner") is the Commissioner of the Chicago Department of Transportation (CDOT). By ordinance, the Commissioner is authorized to grant or deny permits for parades and public assemblies. He is sued in his official capacity only.

18. Defendant Larry Snelling ("Superintendent") is the Superintendent of the Chicago Police Department (CPD). The Superintendent directs the operations of the CPD, which consults with CDOT on permit applications. By ordinance, the Superintendent is authorized to designate a "security footprint" and a list of items prohibited within the security footprint in the days before, during, and after the Convention.

STATEMENT OF FACTS

Bodies Outside of Unjust Law's permit application.

19. Plaintiff Bodies Outside of Unjust Laws has some bones to pick with the Democratic Party. In its view, Democrats, who portray themselves as allies of the LGBTQ+ community and supporters of reproductive rights and bodily autonomy, have not lived up to that image. Hate crimes against LGBTQ+ individuals have risen, and laws targeting their most personal family and medical decisions have proliferated in recent years. Meanwhile, state after state has enacted harsh antiabortion laws that criminalize or chill necessary prenatal care and render pregnancy more dangerous for millions of people. Yet Democrats have failed to pursue an aggressive national agenda to protect the rights of equality and bodily autonomy.

20. In November 2023, Bodies Outside began organizing a march to bring their demands directly to the Democratic Party when its representatives come to Chicago for the Convention. It planned to greet the arriving delegates the evening before the Convention rather than to encroach on the Convention itself. The march would assemble at Water Tower Park, a common assembly point well-known to the local activist community. Based on the collective organizing experience of its members, it devised a route down Michigan Avenue and State Street—streets frequently used as sites for marches and parades—that would be visible from Magnificent Mile and downtown hotels ("the Proposed Route," Ex. A).

21. Plaintiff Andy Thayer hand-delivered a parade permit application ("the Application," Ex. B) on behalf of Bodies Outside of Unjust Laws to CDOT on January 2, 2024, the first day he was permitted to file such an application under Chicago's parade permit ordinance. The Application requested a permit to march along the Proposed Route on August 18, 2024.

22. On or about January 3, 2024, Mr. Thayer received a phone call from a person who said that she was from the First District of the Chicago Police Department and that CPD did not allow permits for marching in the street, a statement that contradicted Chicago's permit ordinance and CDOT's permit application form.

23. On or about January 4, 2024, Mr. Thayer received a phone call from a person who said he was with the "special events department," which Mr. Thayer understood to mean CPD's special events department. Mr. Thayer inferred from the caller's statements that the application would probably be denied if it were not modified, but the caller did not suggest any modifications.

24. On or about January 5, 2024, Mr. Thayer received a phone call from Susan Pawlak, who works at CDOT. She told Mr. Thayer that Bodies Outside should be flexible with the permit application and that it might want to submit an amended version. She did not tell Mr. Thayer about any concerns Defendants had about the Application, recommend any specific changes, or ask for any additional information.

25. On January 8, 2024, Mr. Thayer submitted an amended version of the application ("Amended Application," Ex. C; collectively with the Application, "the Applications"). Based on his years of experience with Chicago's permitting process, he thought he had a sense of Defendants' likely concerns and the type of revisions they might want. He shortened the portion of the route on Michigan Avenue north of the Chicago River, and otherwise modified the route to ensure that marchers walked in the direction of traffic in the lanes they occupied ("Amended Route," Ex. D; collectively with the Proposed Route, the "Proposed Routes").

26. On January 16, 2024, the Commissioner denied both the Applications. A denial letter signed on behalf of the Commissioner by CDOT Assistant Commissioner Bryan Gallardo (Ex. E), cited two reasons: (1) under Chicago Code Section 10-8-330(g)(1) "the proposed parade will substantially and unnecessarily interfere with traffic" and there will not be "sufficient city resources to mitigate the disruption"; and (2) under Section 10-8-330(g)(2), there will not be "a sufficient number of on-duty police officers or other city employees authorized to regulate traffic, to police the public, and to protect parade participants and non-participants from trafficw-related hazards."

27. In the denial letter, the Commissioner offered an alternate route (Ex. F) which would allow marchers to assemble on Columbus Drive north of Roosevelt Road, proceed north

on Columbus Avenue to Jackson Drive, and disband on Jackson between Michigan and Columbus.

28. The Commissioner's alternate route would not be visible from the hotels designated for delegate use.

29. The denial letter did not indicate any opportunity for Bodies Outside of Unjust Laws to propose a different route or a different date or time. Instead, the letter stated that Bodies Outside of Unjust Laws had five days to accept the alternate route, after which the offer of an alternate route would be withdrawn. Ex. E at 3.

30. Bodies Outside of Unjust Laws did not accept the City's proposed alternate route. Instead, it timely filed an administrative appeal from the denial.

The administrative hearing.

31. On January 30, 2024, the Chicago Department of Administrative Hearings held a hearing on Bodies Outside's appeal before Administrative Law Judge (ALJ) Dennis Fleming.

32. Testimony at the hearing failed to establish that insufficient law enforcement resources were available for the Proposed Routes, or that insufficient city resources were available to mitigate their impact on traffic.

33. At the hearing, Secret Service Agent Rashad Spriggs testified that the DNC is a National Special Security Event (NSSE), meaning that "the full capacity and capabilities of the Federal Government are to be used to help in the securing of the event" (transcript of January 30, 2024, hearing, Ex. G, Tr. 17:11-15). Agent Spriggs sits on a steering committee with representatives of CPD, CDOT, and other federal, state and local agencies for this purpose. Ex. G, Tr. 18:5-19:3. The Secret Service had asked to be made aware of any parade permit

applications affecting the Convention, but it had no role in deciding whether particular applications would be granted. *Id.*, Tr. 26:14-21, 27:2-9, 37:2-5, 42:21-24.

34. Bryan Gallardo, an assistant commissioner of CDOT who reviewed the Application and Amended Application, met with CPD representatives who "said that they were concerned given with the activities at the DNC that they weren't going to have sufficient resources to safely provide a path that [Bodies Outside] had requested" on the Applications. *Id.*, Tr. 69:13-19.

35. But CPD lacked the basic information to make such a determination, that is, the number of officers who would be available during the Convention and the number that would be required for the march.

36. Daniel O'Connor, a deputy chief in CPD's Bureau of Patrol who reviewed the Application and Amended Application, testified that CPD will be operating at full capacity during the Convention, cancelling all officers' time off and prohibiting vacations, and as a result, over 11,000 CPD officers will be available. *Id.*, Tr. 135:8-14. Further, CPD "may" supplement its forces during the Convention with officers from other law enforcement agencies in the state, and it was "contemplating" bringing in law enforcement officers from out-of-state law enforcement agencies. *Id.*, Tr. 133:1-14. Officers from the Illinois State Police and Cook County Sheriff's Office will also be deployed. *Id.*, Tr. 183:12-14. Deputy Chief O'Connor did not know how many officers from other law enforcement agencies would be coming to Chicago.

37. Nor did Deputy Chief O'Connor know how many police officers would be required for Bodies Outside's Proposed Routes. He estimated the number at "several hundred," (*Id.*, Tr. 129:19) and, when pressed, said "over 500" (*Id.*, Tr. 145:3). Asked about the margin of

error for that estimate, he said, "I don't have a margin of error. I would have to review it more thoroughly." *Id.*, Tr. 145:14-16.

38. Deputy Chief O'Connor further testified that the alternative Columbus Avenue Route would also require "several hundred officers" (*Id.*, Tr. 144:17:19) but "less resources" (*Id.*, Tr. 141:21-22) than Bodies Outside's Proposed Routes. He offered no testimony to explain how, given the vagueness of these numbers, he knew that CPD would have sufficient resources to secure the Columbus Avenue route but not either of the Plaintiff's Proposed Routes.

39. Likewise, there was insufficient evidence to establish that the Proposed Routes would have a substantial impact on traffic that the City had insufficient resources to mitigate.

40. Mr. Gallardo noted that the march would take place on "heavily trafficked streets" and that thirteen bus routes "would be impacted." *Id.*, Tr. 75:6-23. Yet he acknowledged that CDOT had previously authorized parades on Michigan Avenue, such as the Festival of Lights parade. He testified that permits for that parade were approved even though it had a substantial impact on traffic because organizers of the event provided their own parade marshals and traffic barriers, and CDOT met with them ahead of time to review their traffic management plan. *Id.*, Tr. 88:11-89:6.

41. Yet Mr. Gallardo acknowledged that he did not know whether Bodies Outside planned to have its own marshals for its march. *Id.*, Tr. 89:7-10. Neither Gallardo nor any other CDOT employee asked Bodies Outside about marshals or traffic barriers. Nor did they offer to meet with Bodies Outside about their traffic and pedestrian safety plans.

42. In fact, parade marshals were and are an integral part of Bodies Outside's plans. Plaintiffs Thayer, Keorkunian, and Loew, as well as other members of Bodies Outside, are experienced activists who have acted as marshals, trained others as marshals, or both.

43. Nor did CDOT communicate other traffic-related concerns to Bodies Outside, such as "how [the Amended Route] zig-zags through the city streets," or difficulty of rerouting buses for a march that uses both Michigan Avenue and State Street, as opposed to one or the other—issues that Bodies Outside may have been able to address. *Id.*, Tr. 144:17-19, 76:3-8.

44. Instead, Mr. Gallardo instructed Ms. Palwak to call Mr. Thayer and tell him that there were concerns about the application, but he did not instruct her to tell him any specifics or ask for any additional information. The goal of the call was not to give Bodies Outside "an opportunity to modify their route to avoid having their permit denied," but to make it aware the City had concerns about the application as a matter of "good customer service." *Id.*, Tr. 89:24-91:11.

45. Despite the gaps in the Defendants' knowledge of relevant facts and their failure to provide Bodies Outside the information they would need to submit a successful application, the ALJ found that the City's denial of the application was proper. Ex. H.

The Defendants' policy or practice of distancing protesters from Convention delegates.

46. The Defendants' denial of Bodies Outside's permit is only one in a series of actions they have taken to keep protesters away from the Convention and Democratic delegates.

47. First, Defendants denied four other applications submitted after January 2, 2024, for permits to protest the Convention. The groups submitting these applications were March on the DNC 2024 (Ex. I), Poor People's Economic Human Rights Campaign (Ex. J), March for the People's Agenda (Ex. K), and Students for a Democratic Society at UIC (Ex. L).

48. In contrast to Bodies Outside, the other four organizations sought to march during the Convention, rather than the evening before, and they proposed routes in the vicinity of the United Center, rather than near delegate hotels. Nonetheless, Defendants offered these

organizations the same alternate route on Columbus Avenue that they offered to Bodies Outside. Ex. I at 2; Ex. J at 2; Ex. K at 2; Ex. L at 2.

49. Defendants were later compelled to grant the application of the Poor People's Economic Human Rights Campaign because their denial was issued after the ten business days provided by ordinance. The remaining three organizations filed administrative appeals. In each case, an ALJ affirmed the Commissioner's denial of the permit. Exs. M, N and O.

50. Further, Defendants have taken no affirmative steps to protect First Amendment rights at the Convention—at least, none they have disclosed to the public. They have issued no plan for accommodating protesters. Nor have they announced any "free speech zones" near the Convention's primary venues, or any other means to protest within sight and sound of the delegates.

51. On the other hand, the City has taken steps to facilitate the policing of protesters. In February 2024, CPD released a proposed policy for facilitating mass arrests in "response to crowds, protests, and civil disturbances" (Special Order S06-06). The mass arrest policy states that "[i]f there is any perceived conflict," it "will take precedence" over other CPD policies, including policies on First Amendment rights, use of force, force reporting, and other accountability measures. Officers began training on the mass arrest policy in March 2024.

52. In April 2024, the Chicago City Council enacted Ordinance 2024-0008373 (the "Footprint Ordinance," Ex. P), a measure introduced by Mayor Brandon Johnson that restricts activity within a yet-to-be-announced "security footprint" from August 17 to August 26, 2024. Broad categories of everyday objects are prohibited within the security footprint, including "sealed packages," "metal containers," and "pointed objects," as well as any other objects later deemed potential safety hazards. Ex. P at 4.

The Chicago parade permit ordinance.

53. Chicago's parade permit ordinance, Code Sec. 10-8-330 (the "Permit Ordinance," Ex. Q), facilitated Defendants' denial of Convention-related parade permit applications, including Bodies Outside's application.

Permit denial provisions.

54. The Permit Ordinance establishes a "one-and-done" regime that Defendant Commissioner may wield to permanently bar any given march without considering alternative means by which organizers may reach their intended audience.

55. First, under the Permit Ordinance, the Commissioner is not required to communicate any problems with the proposed date, time, or route of a parade until it issues a denial letter "stating the facts and conclusions which are the basis for" the denial. Ex. Q, Sec. 10-8-330(j)(2). As a result, applicants have no opportunity to adjust their application to address those concerns. If applicants do not accurately guess which route will be acceptable to Defendants, the application will be denied.

56. In the case of Bodies Outside, the organization received only vague warnings that its Proposed Route was unacceptable. In the absence of specific feedback, the organization submitted an Amended Route, but its educated guess about how to fix the route was wrong.

57. Second, although each parade permit denial must include an offer for an "alternate permit," the Commissioner need not consult with applicant in designating that alternative. The alternate permit must have "comparable public visibility and a similar route, location and date to that of the proposed parade," only "to the extent practicable" (*Id.*, Sec. 10-8-330(k)), and it need not take account of an applicant's intended audience.

58. In this case, Defendants claimed that the Columbus Avenue route would be comparably visible because it is in the central business district and would be seen by visitors to Grant Park and vehicles on the busy thoroughfare of DuSable Lake Shore Drive. Ex. G, Tr. 101:12. But they did not and could not claim that DNC delegates—much less the throngs of reporters covering them—were likely to see a march on that route.

59. Third, after receiving a denial letter, applicants may not submit a new application that addresses the specific reasons for denial. The Permit Ordinance prohibits them from "submit[ting] more than one application…for a parade substantially similar in theme or units described but requesting an alternate date or route…." Ex. Q, Sec. 10-8-330(d)(1). The Commissioner may "disregard any such multiple applications," and the applicant "shall not be eligible for such a permit and shall be in violation of" the Permit Ordinance. *Id.*, Sec. 10-8-330(d)(3), (4). Instead, if the applicant does not accept the "alternate route" within five days, the denial becomes final. *Id.*, Sec. 10-8-330(l)(1).

60. In this case, the Commissioner issued a final denial of Bodies Outside's application on January 16, 2024, seven months before the Convention and without adequate information to determine whether the parade was feasible. Nonetheless, he did not invite Bodies Outside to submit further revisions to its route or consider options such as provisionally granting the permit subject to modifications based on new information about resources and security needs.

Liability and indemnification.

61. In the event a permit is granted for a "large parade"—one that takes place in the central business district or will require city services valued above a certain amount—the Permit Ordinance subjects the permit-holder to a risk of unlimited liability for damages it did not proximately cause and could not have reasonably foreseen or mitigated. In addition to carrying

liability insurance, organizers of "large parades" must "indemnify, defend and hold harmless the City of Chicago and its assignees and employees against any additional or uncovered third party claims against the city arising out of or caused by the parade; and shall agree to reimburse the city for any damage to the public way or to city property arising out of or caused by the parade." *Id.*, Sec. 10-8-330(m).

62. Further, CDOT's parade permit application form provides that as a condition for *any* parade permit, the applicant "agrees that it will not hold liable the City for or on account of any losses or damage to property owned by it or controlled by the applicant or for or on account of any loss or damage sustained by the applicant as a result of injuries to employees or agents of the applicant." *See* Ex. B at 3. This language does not appear in the Permit Ordinance.

The Chicago Footprint Ordinance.

63. On April 17, 2024, Chicago enacted Ordinance 2024-0008373, introduced by Mayor Brandon Johnson, which restricts activity within a yet-to-be-announced "security footprint" from August 17 to August 26, 2024 (the "Footprint Ordinance," Ex. P, Sec. I.).

64. Under the Footprint Ordinance, the Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, has complete authority to designate the boundaries of the security footprint. *Id.*, Sec. II (1).

65. The Footprint Ordinance does not provide any guidelines or standards for determining the security footprint. Nothing in the Ordinance would prevent the Superintendent of Police from designating the entire City as within the security footprint. Nor does the Footprint Ordinance provide a date by which the security footprint must be announced.

66. The Footprint Ordinance makes it unlawful to "possess, carry, control, or have immediate access to any item that poses potential safety hazards, as determined by Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications." *Id.*, Sec. II (2)(iii).

67. A non-exhaustive list of items prohibited within the footprint is attached to the Footprint Ordinance as Exhibit A. The list includes broad categories such as "pointed objects," which may include everyday objects such as pencils and medically necessary items such as Epi-pens or insulin injectors. *Id.*, at 4.

68. The Footprint Ordinance does not provide for adequate public notice of the boundaries of the security footprint. It requires that the borders be posted on CPD's website only "to the extent feasible," and authorizes the marking of boundaries only "as necessary." *Id.*, Sec. II (1). The Footprint Ordinance does not require that the list of prohibited items be publicized at all.

69. Violation of Section II (2)(3) of the Footprint Ordinance is a strict liability offense. Possession of a prohibited item in the security footprint is unlawful regardless of whether the person knows that they are in the security footprint or that they are carrying a prohibited item or their purpose in carrying it.

70. The Footprint Ordinance contains no guidelines for law enforcement to ensure that its application is not arbitrary or discriminatory.

71. CPD counterterrorism Chief Duane DeVries said of the security footprint:

> So if something goes bad, and those protests are pushing up against the fence, we don't want anybody to get hurt and get crushed against the fence. Walking a dog in the neighborhood, you're not gonna be right against that fencing. Yes, a dog wouldn't be allowed in that area. But in the neighborhoods, the bike lanes, the scooters, backpacks, people going to work — they will be able to carry all that.

Mitchell Armentrout, *'Security footprint' plan for Democratic Convention kicked to City Council for Wednesday vote*, Chicago Sun-Times (Apr. 11, 2024), https://chicago.suntimes.com/2024-democratic-national-convention/2024/04/11/democratic-national-convention-dnc-security-zone-city-council-united-center-mccormick-place.

72. Chief DeVries' statement suggests that CPD intends to enforce the Footprint Ordinance selectively, with local residents exempt from some or all of its proscriptions.

CAUSES OF ACTION

COUNT I
42 U.S.C. § 1983

Denial of Plaintiffs' Permit Application in Violation of Plaintiffs' rights under the First and Fourteenth Amendments

73. The allegations set forth above are realleged and incorporated by reference as if fully set forth in this paragraph.

74. The Chicago streets upon which Plaintiffs wish to march on August 18, 2024, are traditional public forums.

75. Defendants denied Bodies Outside's permit application for reasons that were not supported by the evidence and not narrowly tailored to serve a significant compelling government interest.

76. Defendants failed to provide an adequate alternative means for Plaintiffs to communicate their message to their intended audience.

77. Defendants exercised undue discretion in denying Bodies Outside's permit application.

78. By denying Bodies Outside's permit application, Defendants have effectively foreclosed its opportunity to hold a march anywhere in Chicago during the Convention.

79. Defendants' actions have put Plaintiffs to the choice of foregoing the opportunity to march in view of the Democratic delegates or risking citation, arrest, or conviction.

80. Defendants' denial of Plaintiffs' permit application violated and continues to violate Plaintiffs' right to freedom of speech and assembly under the First Amendment as incorporated by the Fourteenth Amendment.

COUNT II
42 U.S.C. § 1983

Facial and As-Applied Challenge to the Permit Ordinance
Under the First and Fourteenth Amendments

81. The allegations set forth above are realleged and incorporated by reference as if fully set forth in this paragraph.

82. The Permit Ordinance is not narrowly tailored to any significant governmental interest on its face or as applied to Plaintiffs.

83. By creating a "one and done" regime that disallows resubmissions, the Permit Ordinance, on its face and as applied to Plaintiffs, does not provide adequate alternative avenues for communication.

84. The Permit Ordinance, on its face and as applied to Plaintiffs, grants undue discretion to the Commissioner to deny permit applicants and propose alternate routes.

85. The Permit Ordinance requires applicants to accept liability for the acts of third parties as a condition of marching on Chicago streets.

86. As applied to Plaintiffs, Section 10-8-330(g) of the Ordinance denied them a parade permit for reasons that were not narrowly tailored to serve a significant government interest.

87. On its face and as applied to Plaintiffs, the Permit Ordinance violates the First Amendment as incorporated by the Fourteenth Amendment.

COUNT III
42 U.S.C. § 1983

Facial Challenge to the Chicago Footprint Ordinance
Under the Due Process Clause of the Fourteenth Amendment

88. The allegations set forth above are realleged and incorporated by reference as if fully set forth in this paragraph.

89. The Footprint Ordinance does not give Plaintiffs and others sufficient notice of what conduct is prohibited to allow them to conform their conduct to the law.

90. The Footprint Ordinance does not contain adequate standards for law enforcement to avoid arbitrary or discriminatory enforcement.

91. The Footprint Ordinance is unconstitutionally vague on its face in violation of the Due Process Clause of the Fourteenth Amendment.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. Declaratory relief, including the following:

1. A declaration that Defendants unconstitutionally denied Plaintiff Bodies Outside of Unjust Laws' application for a parade permit;

2. A declaration that Chicago Code Sec. 10-8-330, violates the First and Fourteenth Amendments to the United States Constitution on its face and as applied to Plaintiffs; and

3. A declaration that Section II of Chicago Ordinance 2024-0008373 violates the Fourteenth Amendment to the United States Constitution on its face;

B. Preliminary relief against Defendants, including a preliminary injunction that:

1. Enjoins Defendants from enforcing unconstitutional provisions of the Permit Ordinance;

2. Enjoins Defendants from enforcing Section II of the Footprint Ordinance; and

3. Orders Defendants to grant Plaintiffs a permit allowing them to assemble and march on August 18, 2024, at a time and along a route that allows them to communicate their message to their intended audience of DNC delegates;

C. A permanent injunction prohibiting Defendants from enforcing unconstitutional provisions of the Permit Ordinance;

D. Costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and

E. Any other relief the Court deems just and proper.

Dated: May 2, 2024

Respectfully submitted,

BODIES OUTSIDE OF UNJUST LAWS: COALITION FOR REPRODUCTIVE JUSTICE & LGBTQ+ LIBERATION, ANDREW THAYER, KRISTI KEORKUNIAN, and LINDA LOEW

By counsel:

/s/ Rebecca K. Glenberg

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VERIFICATION

I, Andrew Thayer, have read the foregoing Verified Complaint and under penalty of perjury state the facts alleged therein are true and correct to the best of my knowledge and recollection.

Date: May 2, 2024

Andrew Thayer
One of the Plaintiffs

Exhibit P

ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois (the "State") and, as such, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City was selected to host the 2024 Democratic National Convention (the "Convention"), which is currently scheduled to take place from August 19, 2024 to August 24, 2024; and

WHEREAS, historical data from previous host cities indicates that the Convention is expected to attract approximately 50,000 visitors to the City, including delegates, media, and interested persons; and

WHEREAS, the City recognizes the compelling need to facilitate safety and order during the Convention to accommodate both Convention-related activities and the interests of persons not participating in the Convention-related activities; and

WHEREAS, it is appropriate for the City to prepare, plan, and coordinate in advance with local, State, and federal law enforcement agencies and other public and private entities to successfully host the Convention; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION I. *Definitions.*

The following definitions shall apply for purposes of this ordinance:

"City" means the City of Chicago.

"Convention" means the 2024 Presidential Nomination Convention of the Democratic National Party scheduled to be held on August 19, 2024 through August 24, 2024.

"Convention Period" means the time period commencing at 12:01 a.m. Central Daylight Time on Saturday, August 17, 2024 and extending until 12:01 a.m. Central Daylight Time on Monday, August 26, 2024.

"Designee" means a City official or employee designated by the Mayor in writing to negotiate and execute agreements with public or private entities as specified in subsection (1) of SECTION III of this ordinance.

"Municipal Code" means the Municipal Code of Chicago.

"Security Footprint" means the boundaries of the area designated by the Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, for the Convention and Convention-related activities.

SECTION II. *Security Footprint regulations.*

(1) The Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, is authorized to designate, and mark as necessary, the boundaries of the Security Footprint. The boundaries of the Security Footprint shall be publicized on the Chicago Police Department's website to the extent feasible.

(2) During the Convention Period, it shall be unlawful for any person, other than governmental employees in the performance of their duties, or persons duly issued a permit that specifically authorizes the activities specified in this subsection, to do any of the following in the Security Footprint:

(i) push, pull or transport any vehicle, cart, or float;

(ii) throw any item;

(iii) possess, carry, control, or have immediate access to any item that poses potential safety hazards, as determined by Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, including, but not limited to, any item listed in Exhibit A to this Ordinance, which is incorporated into and made an integral part of this Ordinance.

(iv) except as otherwise provided in subsection (c) of Section 10-36-400 of the Municipal Code, operate any small unmanned aircraft. For purposes of this subsection (2)(iv) of SECTION II, the terms "operate" and "small unmanned aircraft" have the meanings ascribed to these terms in Section 10-36-400 of the Municipal Code. Any person who violates this subsection (2)(iv) of SECTION II shall be subject to the penalty set forth in subsection (d) of Section 10-36-400 of the Municipal Code.

(3) Except as otherwise provided in this ordinance, any person who violates subsection 2 of Section II of this ordinance shall be fined not less than $100 nor more than $500 or imprisoned for a period of not less than ten days nor more than six months, or both, for each offense.

SECTION III. *Transaction authority.*

(1) The Mayor or his designees are authorized to negotiate and execute agreements with public and private entities for goods, work, services or interests in real property, or for providing grants of duly appropriated funds, personal property or services, regarding the planning, security, logistics, and other aspects of hosting the Convention, on such terms and conditions as the Mayor or such designees deem appropriate and which terms may provide for indemnification by the City, and to provide such assurances, execute such other documents and take such other actions, on behalf of the City, as may be necessary or desirable to host the Convention. All such agreements shall be subject to the approval of the Corporation Counsel as to form and legality.

(2) Notwithstanding anything to the contrary contained in the Municipal Code or any other ordinance or mayoral executive order, no parties to agreements entered into with the City pursuant to this Section III shall be required to provide to the City the document commonly

known as the "Economic Disclosure Statement and Affidavit" (or any successor to such document) in connection with such agreements.

(3) Except as otherwise provided in subsection (1) of this section, notwithstanding anything to the contrary contained in the Municipal Code or any other ordinance or mayoral executive order, agreements entered into with the City pursuant to this Section III may contain such terms as the Corporation Counsel determines to be necessary for entering into such agreements but need not contain provisions imposed by City ordinances or State law, unless such provisions are mandated by State law and preempt the City's home rule authority, or mandated by federal law.

(4) The Mayor or his designees may enter into an agreement as provided in subsection (1) of this Section only after making a determination that: (i) there is no existing contract awarded by the City to a vendor that can be used to procure the needed goods, work, services or interests in real property; or (ii) an existing contract awarded by the City to a vendor is not sufficient to procure the needed goods, work, services or interests in real property.

(5) Except when the minimum commercially available term for any agreement entered into pursuant to this Section III extends beyond September 30, 2024, no agreement entered into pursuant to this Section III may contemplate the provision of goods, work, services or interests in real property beyond September 30, 2024, unless there is separate authority for the agreement.

SECTION IV. This ordinance shall take effect 10 days after its passage and publication. This ordinance shall expire of its own accord, without further action of the City Council, on September 30, 2024.

Exhibit A

Items prohibited in the Security Footprint during the Convention:

- Laptops, Tripods, Monopods, and Selfie Sticks
  *If an invited guest arrives with a tablet, they will be redirected to the X-ray line for screening and then permitted entry with the tablet.
- Large Bags and Suitcases exceeding size restrictions (18" x 13" x 7")
- Sealed packages
- Drones and other Unmanned Aircraft Systems
- Animals other than service/guide dogs
- Bicycles, Scooters, Folding Chairs, Balloons, Coolers
- Glass, Thermal, or Metal Containers
- Umbrellas with metal tips
- Any pointed object(s), including knives of any kind
- Aerosols, Tobacco Products, e-Cigarettes, Lighters, Matches
- Firearms, Ammunition, Fireworks, Laser Pointers, Stun Guns, Tasers, Mace/Pepper Spray, Toy Weapons
- Tents and Structures
- Any Other Items Determined by Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, to be Potential Safety Hazards.

Exhibit R

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BODIES OUTSIDE OF UNJUST LAWS: COALITION FOR REPRODUCTIVE JUSTICE & LGBTQ+ LIBERATION, ANDREW THAYER, KRISTI KEORKUNIAN, and LINDA LOEW,	)	No. 24-cv-3563
Plaintiffs,	)	Hon. Thomas M. Durkin
v.	)	
CITY OF CHICAGO, TOM CARNEY in his official capacity as Commissioner of the Chicago Department of Transportation, and LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department,	)	
Defendants.	)	

DECLARATION OF ANDREW THAYER

I, Andrew Thayer, hereby declare as follows:

1. My name is Andrew Thayer. I am a resident of Chicago, Illinois and a plaintiff in this action.

2. I make this Declaration based on personal knowledge, and I am competent to testify regarding the following facts.

3. I regularly organize and participate in protests, marches, and assemblies.

4. In addition to Bodies Outside of Unjust Law's march scheduled for August 18, 2024, I intend to participate in one or more marches or demonstrations against the Democratic National Convention (DNC) from August 19 to August 21, 2024, in the vicinity of the United Center.

5. When I participate in protests, I typically bring certain items with me. I intend to bring some of those items to any protests I attend near the United Center during the DNC, including the following:

a. Pen,

b. House keys,

c. Phone,

d. Portable phone charger, and

e. Protest buttons.

6. I may also bring other items, depending on the weather, how I am feeling, or other activities I have planned for the day.

7. I do not know which, if any, of the items I bring might be prohibited by Chicago Ordinance 2024-0008373 (the "Footprint Ordinance").

8. For example, I do not know if the bar on "pointed objects" includes protest buttons that attach with a pin in the back.

9. Moreover, I do not know what items may later be "[d]etermined by the Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, to be [p]otential [s]afety [h]azards."

10. Because the Footprint Ordinance is unclear, I do not know how to ensure that I comply with it when I engage in protests against the DNC near the United Center.

I declare under penalty of perjury that the foregoing is true and correct.

July 12, 2024

Andrew Thayer

Exhibit S

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BODIES OUTSIDE OF UNJUST LAWS: COALITION FOR REPRODUCTIVE JUSTICE & LGBTQ+ LIBERATION, ANDREW THAYER, KRISTI KEORKUNIAN, and LINDA LOEW,	)	No. 24-cv-3563
Plaintiffs,	)	Hon. Thomas M. Durkin
v.	)	
CITY OF CHICAGO, TOM CARNEY in his official capacity as Commissioner of the Chicago Department of Transportation, and LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department,	)	
Defendants.	)	

DECLARATION OF KRISTI KEORKUNIAN

I, Kristi Keorkunian, hereby declare as follows:

1. My name is Kristi Keorkunian. I am a resident of Chicago, Illinois and a plaintiff in this action.

2. I make this Declaration based on personal knowledge, and I am competent to testify regarding the following facts.

3. I regularly organize and participate in protests, marches, and assemblies.

4. In addition to Bodies Outside of Unjust Law's march scheduled for August 18, 2024, I intend to participate in one or more marches or demonstrations against the Democratic National Convention (DNC) from August 19 to August 21, 2024, in the vicinity of the United Center.

5. When I participate in protests, I typically bring certain items with me. I intend to bring some of those items to any protests I attend near the United Center during the DNC, including the following:

a. A store-bought first-aid kit, which typically includes band-aids, an anti-inflammatory such as Ibuprofen, a topical antibiotic such as Neosporin, a sealed package of gauze, a roll of medical tape, a small scissors (typically about 3 inches long, with a rounded tip), lidocaine spray, and a splint,

b. Towels,

c. Sign-making materials, including tagboard, markers, a staple gun and staples, and paint sticks from a hardware store (typically about an inch wide and a foot long),

d. A pint of milk (to relieve eye irritation caused by pepper spray),

e. For the use of others or for myself (I have diabetes) if needed, a blood sugar monitoring kit, including lancets, a lancing device, a vial containing test strips, and a glucometer,

f. Narcan, a nasal spray that can counteract the effects of an opioid overdose,

g. Sunscreen,

h. House keys,

i. Phone,

j. Portable phone charger,

k. Faraday bag (signal blocking), and

l. Protest buttons.

6. I may also bring other items, depending on the weather, how I am feeling, or other activities I have planned for the day.

7. I do not know which, if any, of the items I bring might be prohibited by Chicago Ordinance 2024-0008373 (the "Footprint Ordinance").

8. For example, I do not know if the bar on "pointed objects" includes protest buttons that attach with a pin in the back, the scissors in a first-aid kit, or a lancet in a glucose monitoring kit.

9. Likewise, I do not know if the prohibition on "sealed packages" includes sealed packets of gauze or other medically sealed items in a first-aid kit or glucose monitoring kit.

10. Moreover, I do not know what items may later be "[d]etermined by the Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, to be [p]otential [s]afety [h]azards."

11. For example, I do not know if the chemicals in Narcan or other medical products might later be declared hazardous.

12. Because the Footprint Ordinance is unclear, I do not know how to ensure that I comply with it when I engage in protests against the DNC near the United Center.

I declare under penalty of perjury that the foregoing is true and correct.

July 12, 2024

Kristi Keorkunian

Exhibit T

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BODIES OUTSIDE OF UNJUST LAWS: COALITION FOR REPRODUCTIVE JUSTICE & LGBTQ+ LIBERATION, ANDREW THAYER, KRISTI KEORKUNIAN, and LINDA LOEW,	)	No. 24-cv-3563
Plaintiffs,	)	Hon. Thomas M. Durkin
v.	)	
CITY OF CHICAGO, TOM CARNEY in his official capacity as Commissioner of the Chicago Department of Transportation, and LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department,	)	
Defendants.	)	

DECLARATION OF LINDA LOEW

I, Linda Loew, hereby declare as follows:

1. My name is Linda Loew. I am a resident of Chicago, Illinois and a plaintiff in this action.

2. I make this Declaration based on personal knowledge, and I am competent to testify regarding the following facts.

3. I regularly organize and participate in protests, marches, and assemblies.

4. In addition to Bodies Outside of Unjust Law's march scheduled for August 18, 2024, I intend to participate in one or more marches or demonstrations against the Democratic National Convention (DNC) from August 19 to August 21, 2024, in the vicinity of the United Center.

5. When I participate in protests, I typically bring certain items with me. I intend to bring some of those items to any protests I attend near the United Center during the DNC, including the following:

a. Pens,

b. Plastic water bottle,

c. Sunscreen,

d. Hand sanitizer,

e. Umbrella,

f. House keys,

g. Phone,

h. Portable phone charger,

i. Protest buttons.

6. I may also bring other items, depending on the weather, how I am feeling, or other activities I have planned for the day.

7. I do not know which, if any, of the items I bring might be prohibited by Chicago Ordinance 2024-0008373 (the "Footprint Ordinance").

8. For example, I do not know if the bar on "pointed objects" includes pens or protest buttons that attach with a pin in the back.

9. Moreover, I do not know what items may later be "[d]etermined by the Chicago Superintendent of Police, in consultation with the United States Secret Service and the Chicago Office of Emergency Management and Communications, to be [p]otential [s]afety [h]azards."

10. For example, I know that "[u]mbrellas with metal tips" are currently prohibited, but I do not know if the Superintendent might later determine that all umbrellas are potential safety hazards.

11. Because the Footprint Ordinance is unclear, I do not know how to ensure that I comply with it when I engage in protests against the DNC near the United Center.

I declare under penalty of perjury that the foregoing is true and correct.

July 12. 2024

Linda Loew

STATEMENT PURSUANT TO CIRCUIT RULE 30(d)

Pursuant to Circuit Rule 30(d), I hereby state that all of the materials required by Circuit Rule 30(a) and (b) are included herein.

Dated: July 26, 2024

/s/ *Rebecca K. Glenberg*
Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2024, I electronically filed the foregoing Brief and Required Short Appendix of the Plaintiffs-Appellants with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ *Rebecca Glenberg*