No. 05-35752

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL JAMES BERGER, a single man also known as "Magic Mike,"

Plaintiff-Appellee,

vs.

CITY OF SEATTLE; VIRGINIA ANDERSON, Director of Seattle Center; MICHAEL ANDERSON, Emergency Service Manager for Seattle Center; TEN UNKNOWN EMPLOYEES/OFFICERS, of the Seattle Center and the City of Seattle, all in both their individual and official capacities,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

District: No. C03-3238 JLR

The Honorable James L. Robart, District Judge

BRIEF *AMICUS CURIAE* OF AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF APPELLEE

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INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union of Washington is a statewide non-partisan and non-profit organization with over 20,000 members, dedicated to preserving our nation's founding principles of civil liberties, including those embodied in the U.S. Constitution. From its inception, the ACLU has been a strong supporter of the freedom of expression and frequently appears before this Court as counsel for parties and as *amicus curiae*.

The ACLU submits this brief to provide information on Seattle Center's unique role as a central public venue for the exercise of free speech rights in Seattle, and the impact that Seattle Center's sweeping regulations will have on speech in the park and the trend towards privatizing public property. Both parties to this appeal have consented to the ACLU's submission of this brief.

I. INTRODUCTION

Seattle Center describes itself as "the heartbeat" of Seattle, and a "public space open to everyone." ER 45; SER 3-4. It consists of 87 acres, 23 of which are open space and plazas. SER 53. Each year, Seattle Center hosts key cultural events in the city – the Northwest Folk Life Festival in the spring, the Bite of Seattle in the summer, and the Bumbershoot music festival in the fall. It is also home to thousands of free concerts, two sports teams, museums dedicated to science and the arts, and Seattle's most recognizable landmark – the Space Needle.

In February 2008, Senator Barack Obama chose this premier public venue to deliver a speech to more than 17,000 people inside Seattle Center's Key Arena. Thousands waited in line to see him speak that day. Radio and television crews sprawled across the park, prepared to capture this newsworthy event. One would expect that Senator Obama's visit to this public park would create a significant opportunity to exercise one's free speech rights.

Those expectations would fall short. Seattle Center's regulations stifle substantial amounts of the discourse that could have taken place around that event. For example, the regulations would have barred Senator John McCain's volunteers from handing out leaflets to people waiting in line to see Senator Obama. Senator Obama himself actually violated Seattle Center's regulations

when he spontaneously grabbed a megaphone on his way into Key Arena, and spoke to the crowd waiting outside. Anyone engaged in these forms of political expression risked a five-day exclusion from the park, enforceable by criminal trespass laws. And yet, while the rules forbid even a presidential candidate from spontaneously connecting with voters waiting in line to see him, they would allow licensed vendors to sell those same voters a snow globe before they go inside.

These rules are hardly consistent with our First Amendment traditions, which treat public parks as the quintessential public forum. Instead, Seattle Center's restrictions muzzle some of the most treasured forms of speech in our parks. The Constitution requires government to be more precise when limiting the right of expression. The district court correctly struck down Seattle Center's sweeping regulations, and ordered the City back to the drawing board. This Court should affirm that ruling, and the concept of free expression in our public parks as a central concept of liberty.

II. ARGUMENT

A. Seattle Center is the Main Public Venue for Free Expression and the Exchange of Culture in Seattle.

Seattle Center, self-described as the "heartbeat" of Seattle, has been a central gathering place in the Seattle region for more than a century. ER 45; SER 3-4; *see also* Don Duncan, MEET ME AT THE CENTER: THE STORY OF SEATTLE CENTER FROM THE BEGINNINGS TO THE 1962 SEATTLE WORLD'S FAIR TO THE 21ST CENTURY (1992). Today, more than 10 million people visit Seattle Center each year. SER 53. Approximately 4,000 people use Seattle Center in every day life simply to "congregate on the sidewalks and parks that are open to the public." ER 115 (Order at 4 n.2). Others attend concerts, plays, the ballet, and athletic and cultural events. ER 45; SER 53. Seattle Center houses, among other things, the Pacific Science Center, Experience Music Project, and the Pacific Northwest Ballet. *Id.* Seattle Center's importance as a public space and "reflection of the Northwest itself," where people gather for cultural, political, and social expression, cannot be overstated. ER 45.

Seattle Center's stated goal of bringing citizens "together in a rich and varied community" further highlights the special role it plays in the fabric of Seattle's culture. ER 45. Consistent with this goal, Seattle Center has hosted hundreds of thousands of musicians, magicians, political activists, community

organizers, and cultural groups from all walks of life. ER 45. "Street performers and Seattle Center have been joyously identified with one another for many many years." SER 46.

Seattle Center is also Seattle's prime location for cultural and political expression. Seattle's 2008 gay pride march ended with a rally at Seattle Center. *See* Brad Wong & Molly Mullen, *It was Hot at the Pride Parade. And So was the Temperature*, THE SEATTLE POST-INTELLIGENCER (June 29, 2008) (describing the Pride parade ending at Seattle Center, which meant "thousands poured into Seattle Center to celebrate PrideFest"), *available at* http://seattlepi.nwsource.com/local/368879_pride30.html. Opponents of the war in Iraq used Seattle Center as the starting point and ending point for an anti-war march and post-march rally. Tan Vinh, *Thousands Rally to Protest Iraq War*, THE SEATTLE TIMES (March 20, 2005). Immigrant rights supporters have also used Seattle Center as their rallying point. *See* Lornet Turnbull & Sanjay Bhatt, *Thousands Rally to Support Immigration-Law Changes*, THE SEATTLE TIMES (May 2, 2007). As noted above, Senator Obama used Seattle Center's Key Arena to host the main event during his only visit to Washington before the state's presidential primary. Ralph Thomas, *Seattle's Key Arena Jammed for Barack Obama*, THE SEATTLE TIMES (Feb. 8, 2008).

For street performers and political activists alike, the speech restrictions at issue in this appeal disregard a century of cultural and political tradition designating Seattle Center as a place where expression is encouraged, and instead elevate certain forms of commercial speech over protected speech. *See, e.g.*, SER 57-59 (letter from street performers discussing the inability to perform after being forced to remove signs requesting donations). Indeed, as this Court has noted, it is critical for "downtown public spaces" to remain "conducive to expressive activities," particularly in light of the "trends toward privatization" of public spaces. *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003) ("*ACLU I*"). Public parks "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). Thus, government "bear[s] an extraordinarily heavy burden to regulate speech in such locales." *N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984).[1] Seattle Center's speech regulations categorically fail that burden.

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[1] On appeal, the government concedes that the Seattle Center is a traditional public forum for purposes of First Amendment analysis. App. Opening Br. at 3-4 (issues for review do not include Seattle Center's status as a traditional public forum).

Amicus ACLU writes to draw attention to the importance of Seattle Center as Seattle's most public and culturally significant forum for the exercise of our right to free expression. This brief focuses on two of Seattle Center's rules – the captive audience rule and the active solicitation ban – to reveal how far these rules depart from our First Amendment traditions, and to highlight the wide range of expression they suppress in this central forum.[2]

B. Seattle Center's "Captive Audience" Rule Would Ban Speech Throughout Virtually the Entire Park.

Seattle Center's "captive audience" rule is a dramatic expansion of the government's ability to regulate expression. Rule G.4[3] prohibits all "speech activities," defined to include both political and commercial speech, within 30 feet of any "captive audience," any building entrance, or any person "engaged in any scheduled event that is sponsored or co-sponsored by Seattle Center." A captive audience means any person or group "(1) waiting in line to

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[2] Judge Berzon's dissent to the previous panel decision provides cogent analysis on the permit requirement's shortcomings. *See Berger v. City of Seattle*, 512 F.3d 582, 607-15 (9th Cir. 2008) (Berzon, J., dissenting). The ACLU respectfully disagrees, however, with her (and the panel's) endorsement of the performance location restrictions because they are not narrowly tailored to their alleged purpose. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

[3] This brief cites directly to Seattle Center's Campus Rules. Those rules are in the appeal record at ER 45-64.

obtain tickets or food or other goods or services, or to attend any Seattle Center event; (2) attending or being in an audience at any Seattle Center event; or (3) seated in any seating location where foods or beverages are consumed." Rule C.5.

Though the City may place appropriately tailored restrictions on expression to avoid disruption at large events, this captive audience rule goes beyond constitutional limits. The breadth of this rule is remarkable in two respects. First, people enjoying parks have never before been classified as a captive audience in the First Amendment context.[4] The City's effort to do that here represents a troubling trend in which municipalities are privatizing traditional public forums. Second, as a practical matter, nearly the entire park falls within the 30-foot buffer zone that surrounds park visitors.

1. Public park visitors have never been classified as a "captive audience."

No court has defined people waiting in line or picnicking in a park as a "captive audience" whose interest in simply being left alone merits broad restrictions on speech. Instead, courts have long held that the government's ability to "shut off discourse solely to protect others from hearing it [has been]

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[4] Judge Berzon's dissent to the previous panel's decision is particularly astute on this point. *See Berger*, 512 F.3d at 259-67 (Berzon, J., dissenting).

... dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner." *Cohen v. California*, 403 U.S. 15, 21 (1971).

Given this high threshold, it should come as no surprise that Amicus ACLU could not locate a single case where a court upheld a regulation by invoking captive audience analysis in a "traditional public forum," like Seattle Center. Instead, captive audience cases have involved private residences, schools, and other places that are not classified as a traditional public forum. *See Frisby v. Shultz*, 487 U.S. 474 (1988) (private residences); *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) (commercial forum of interior of mass-transit); *Bethel School Dist. No. 403 v. Fraser,* 478 U.S. 675, 684 (1986) (limited public forum of school); *Lassonde v. Pleasanton Unified School Dist.*, 320 F.3d 979, 985 (9th Cir. 2003) (same).

Indeed, courts have refused to apply the captive audience analysis in public forums. *See Kuba v. 1-A Agr. Ass'n*, 387 F.3d 850, 861 n.10 (9th Cir. 2004) (no captive audience in limited public forum); *Hopper v. City of Pasco*, 241 F.3d 1067, 1082 n.16 (9th Cir. 2001) (employees and visitors of city hall, a "designated public forum," are not a captive audience); *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) (no captive audience for public street);

Cohen, 403 U.S. at 21-22 (limited public forum of courthouse). Park visitors are not captive in a physical or circumstantial sense. They can avert their eyes from an unwelcome performance, *see Erznoznik* , 422 U.S. at 212, discard an unwanted leaflet, *see Con. Edison Co. of New York v. Public Service Commission of New York*, 447 U.S. 530, 542 (1980), or choose not to go near someone giving a speech, *see Church of the Rock v. City of Albuquerque*, 84 F.3d 1273, 1280-81 (10th Cir. 1996) (citing *Lee v. Weisman*, 505 U.S. 577, 595 (1992)).

Further, Amicus ACLU writes to emphasize the larger policy problem that the "captive audience" rule represents: the privatization of traditional public forums, with its attendant elevation of commercial speech and suppression of traditional expressive activity. From pamphleteers to buskers, Seattle Center's captive audience rule limits "speech activities." The Court should be wary of such drastic limitations. "Awareness of contemporary threats to speech must inform our jurisprudence regarding public forums." *ACLU I*, 333 F.3d at 1097. The previous panel did not exhibit that "awareness," and ignored the call to guard against the slow erosion of our traditional public forums:

> [A]s society becomes more insular in character, it becomes essential to protect public places where traditional modes of

> speech and forms of expression can take place. We think this is particularly true with respect to downtown public spaces conducive to expressive activities. . . . If this trend of privatization continues . . . citizens will find it increasingly difficult to exercise their First Amendment rights to free speech, as the fora where expressive activities are protected dwindle.

ACLU of Nevada v. City of Las Vegas, 466 F.3d 784, 791 (9th Cir. 2006) (citations omitted) ("*ACLU II*"). The Seattle Center represents Seattle's "public space[] conducive to expressive activities." Consistent with the warning in *ACLU II*, Seattle Center's speech regulations stifle traditional speech, and facilitate commercial speech. *Compare* Rule C.14 (excluding activity conducted by City employees or licensed concessionaries from definition of "speech activities), *with* Rule G.4 (limiting "speech activities"). The district court wisely recognized this disturbing result, and rejected ths captive audience rule. This Court should affirm that decision.

2. Nearly every inch of Seattle Center is within 30 feet of someone classified as a "captive audience."

Seattle Center's captive audience rule is also dramatic because it has the practical effect of silencing speech throughout virtually the entire park. First, the rule applies to far more people than Mr. Berger and other street performers. The rule limits all speech activities including leafleting, signature gathering, and political speech, (*i.e.*, "core First Amendment speech, critical to the functioning of our democratic system."). *Long Beach Area Peace Network v.*

City of Long Beach, 522 F.3d 1010, 1020 (9th Cir. 2008); *see* Rule C.14 (defining "speech activities" as both political and commercial speech not conducted by City employees or licensed concessionaries). Anyone engaged in any type of expression, whether artistic or political, within 30 feet of someone waiting in line or having a picnic is in violation of the Seattle Center rules.

Further, the 30-foot buffer zone around those in line and those eating covers virtually all of Seattle Center's active space. During the Bite of Seattle, for example, nearly the entire central park area contained food stalls, beer gardens, and performance stages. *See* Attachment A (Bite of Seattle map). Even on the most typical days, the Fun Forest is engulfed in people eating, or waiting in lines for food and rides. *See* SER 50. Those handing out flyers on sustainable farming, or gathering signatures on a petition to save the beloved Seattle SuperSonics, must avoid the Fun Forest entirely or risk penalty under the captive audience rule.

Indeed, the captive audience rule even outlaws expression in at least three of the designated street performer locations. These locations are near the International Fountain, at the heart of Seattle Center. SER 51. This area is described as a "centerpiece of the broad open space and lawn . . . [and] a favorite lounging area and delight for young and old." SER 54. Of course,

anyone eating in this lounging area is a "captive audience" from whom street performers must maintain a distance of 30 feet. Rule C.5.

The practical effect of the captive audience rule is to herd anyone engaged in expression, from gathering signatures to singing in the rain, to locations where there are no people. This Court has already rejected similar round up efforts, observing that limiting expression to places where people are unlikely to congregate "give[s] the impression to passers by that these people are to be avoided," and sterilizes a once-vibrant speech-filled park. *Kuba*, 387 F.3d at 863. The captive audience rule is inconsistent with this Court's precedent and traditional notions of free expression in our public parks.

C. Seattle Center's Active Solicitation Ban is a Content-Based and Overbroad Restriction on Protected Speech.

As the district court properly found, Seattle Center's ban on active solicitation by street performers also curtails significant amounts of protected speech. The Supreme Court has consistently recognized that requests for donations merit constitutional protection. *See, e.g., Village of Schaumburg v. Citizens for Better Env't*, 444 U.S. 620, 633 (1980); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (advertisement offering legal services falls within First Amendment's protections). In *Schaumburg v. Citizens for a Better Environment*, the Supreme Court struck down an ordinance prohibiting door-

to-door or on-street solicitation. 444 U.S. at 639. The Court recognized that donation requests are often part of a larger message:

> "[Government regulation of solicitation] must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that without solicitation the flow of such information and advocacy would likely cease."

Id. at 632. Requests for financial contributions are often the "call to action" at the conclusion of political, social, or artistic expression (*e.g.*, "If you liked my show, please support street performances at Seattle Center with a donation."). For this reason, "our cases have long protected speech even though it is in the form of . . . a solicitation to pay or contribute money." *Bates*, 433 U.S. at 363 (internal citation omitted).

Seattle Center's rule prohibits all active solicitation by performers: "No performer shall actively solicit donations, for example by live or recorded word of mouth, gesture, mechanical devices, or second parties." Rule F.3.a. The rules define a street performer as anyone who sings, dances, or otherwise engages in artistic expression. Rule C.15. The City contends that Rule F.3a addresses past complaints about "overbearing and pushy solicitation by some performers." App. Opening Br. at 31.

The plain language of the rule restricts far more than that, prohibiting all forms of active solicitation by anyone deemed a "street performer." This rule fails constitutional muster in two respects. First, the rule is a content-based restriction that does not survive strict scrutiny. Second, it prohibits more speech than necessary to achieve its alleged purpose.

1. The solicitation ban is a content-based restriction on speech.

The solicitation ban is unlawful because it suppresses expression based on the content of that expression, and does not survive strict scrutiny. *See Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118 (1991) (noting that content-based laws trigger strict scrutiny which requires the state to show that the regulation serves "a compelling state interest and is narrowly drawn to achieve that end"). Amicus ACLU respectfully disagrees with the district court on this point. Under Seattle Center's rules, words and gestures that culminate in some request for funds are prohibited; words and gestures that do not are permitted. Courts declare such rules to be content-based regulations because law enforcement officials must "evaluate the substantive content of a message to know whether the solicitation ordinance applies." *ACLU II*, 466 F.3d 784, 76 n.12 (9th Cir. 2006).

In *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136 (9th Cir. 1998), this Court found a "canvassing ban" to be a content-based restriction on speech.

The ordinance at issue distinguished both between commercial and non-commercial speech, and among different types of commercial speech:

> The Ordinance targets and restricts the distribution of material containing *some* commercial information. The Ordinance's ban against "off-premises canvassing" in the Las Vegas Resort District does not prohibit the distribution of handbills that contain no commercial advertising. As a result, an officer who seeks to enforce the Clark County Ordinance would need to examine the contents of the handbill to determine whether its distribution was prohibited.

Id. at 1145 (emphasis in original). Because the applicability of the rule depended on the content of the message, the Court concluded that the rule was a content-based restriction.

The same applies to Seattle Center's active solicitation ban. Seattle police officers must analyze the substance of a street performer's message to determine whether it is permissible ("I encourage you to support the arts.") or if it is forbidden ("If you liked our show, please put a dollar in our music case."). The City, by its own admission, is already making such content-based enforcement decisions. App. Opening Br. at 32-33. This Court has previously observed that even where the "distinction is innocuous or eminently reasonable, it is still a content-based distinction because it 'singles out certain speech for differential treatment based on the idea expressed.'" *ACLU II*, 466 F.3d at 794 (quoting *Foti v. City of Menlo Park*, 146 F.3d 629, 636 n.7 (9th

Cir. 1998)). Because the active solicitation ban singles out certain kinds of speech based on the idea expressed, the Court should hold that the active solicitation ban is a content-based restriction.

As a content-based speech restriction, the ban is subject to strict scrutiny. *Id.* at 792 (content-based speech restrictions subject to strict scrutiny review). It must be the least restrictive means of addressing the alleged problem. *Id.* (quoting *S.O.C.*, 152 F.3d at 1145). In *ACLU II*, this Court struck down Las Vegas' active solicitation rule after observing that a "solicitation ordinance cannot survive strict scrutiny [when it] prohibits even the peaceful, unobstructive distribution of handbills requesting future support of a charitable organization." 466 F.3d at 797. Seattle Center's active solicitation ban does that and much more, as demonstrated below.

2. The active solicitation ban curtails far more speech than necessary to achieve its alleged purpose.

Though the Court in *ACLU II* found that Las Vegas' regulation was a content-based restriction, it explained that any ordinance burdening substantially more speech than necessary is invalid without regard to content-neutrality:

> The record indicates that aggressive panhandling, solicitation, and handbilling were the problems confronted by the City. Yet the solicitation ordinance targets a substantial amount of constitutionally protected speech that is not the source of the

> "evils" it purports to combat. The ordinance would therefore fail the time, place, and manner test even if it were content-neutral.

Id. at 796 n.13; *see also Ward,* 491 U.S. at 799 ("Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals."). In other words, whether or not a rule is content-neutral, it cannot target a substantial amount of constitutionally protected speech beyond the source of the underlying problem.

Seattle Center's complete ban on all "active" forms of solicitation silences far more than aggressive and pushy behavior.[5] The rule does not even ask whether the performer's solicitation was actually aggressive or pushy. Thus, even those who would ask for donations in a friendly and respectful manner fall under the ban's sweep. Indeed, the active solicitation ban is actually unnecessary. State laws and municipal ordinances already prohibit aggressive and pushy behavior. *See, e.g.,* RCW 9A.84.030 (disorderly conduct); RCW 9A.46.020 (harassment). Seattle Center's total ban on all active street performer solicitation silences substantially more speech than necessary to stop aggressive and pushy behavior. The ban fails constitutional review. The Court should affirm the district court's ruling on this point.

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[5] For this reason, the ban also cannot logically be the least restrictive means of stopping aggressive and pushy behavior.

D. There Is No Narrowing Construction That Can Save Seattle Center's Street Performer Rules From Constitutional Invalidation.

The City cannot save its overbroad speech restrictions by construing them more narrowly. While a narrowing construction is relevant to evaluating the constitutionality of these rules, limiting constructions may be imposed only if "made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice." *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 770 (1988); *see also Bd. of Airport Com'rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 575 (1987).

The City contends that its overbroad permit requirement "should be construed to regulate only performances aimed at attracting an audience." App. Opening Br. at 19. Neither the plain language of the permit requirement, judicial or administrative precedent, nor the City's practice support this limiting construction. Any "member of the general public who engages in any performing art or the playing of any musical instrument, singing or vocalizing, with or without musical accompaniment," is a street performer who must obtain a permit before speaking. Rules F.1, C.6. The "attracting an audience" construction also does not have authoritative basis as required by *Lakewood v. Plain Dealer Pub. Cf. Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (relying on "authoritative constructions" alone). Instead, the City's

proffered limiting construction represents an attempt at post-hoc rationalization of an unconstitutional rule.[6]

The City's effort on this point demonstrates the unique problem with "limiting constructions." It is, by definition, a departure from the plain text of the rule in question, which results in vagueness and arbitrary enforcement. For example, a singer who unintentionally attracts an audience runs the risk of violating the permit rule. A police officer would have to determine whether that singer intended to attract an audience, which the City contends is the only situation that triggers the permit requirement. Thus, the City implicitly asks the Court to presume that it will act in good faith, and not enforce the rules against spontaneous singing and non-obstructive performances. "But this is the very presumption that the doctrine forbidding unbridled discretion disallows." *Lakewood*, 486 U.S. at 770. That doctrine is particularly salient in this case, where the City has a track record of arbitrary enforcement against even protected speech. SER 18 (Citizen who brought a poster into Seattle Center in support of a ballot initiative punished).

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[6] Indeed, the "attracting an audience" construction does not actually limit the scope of the rules. People hold rallies and sing "spontaneous protest songs" in parks specifically because they want to attract and communicate with an audience. Thus, there are no performers who would fall outside the scope of the City's proffered limiting construction.

In sum, the City's efforts to save its overbroad speech restrictions cannot be sustained. Its effort at offering a saving construction finds no support in the rule's text, case law, or practice. The district court correctly decided that the City should go back to the drawing board, and craft rules that respect our First Amendment traditions. This Court should affirm that decision.

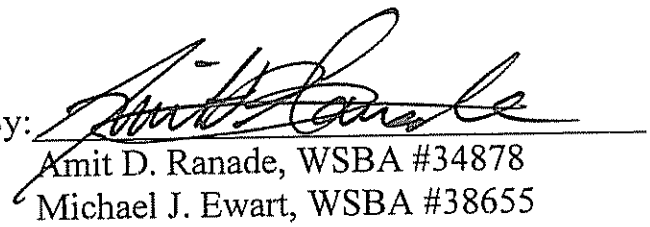
III. CONCLUSION

No one disputes that Seattle Center has a right to curtail aggressive and pushy conduct towards park visitors. In solving that problem, however, the City cannot simply bludgeon vast amounts of political, social, and artistic expression into silence. The Constitution requires more; it requires the government to develop narrowly tailored rules that limit only as much speech as necessary to solve the problem at hand.

The district court correctly held the City accountable to our First Amendment traditions, requiring it to expend the effort to develop rules that properly balance public safety with the fundamental right of free expression. This Court should affirm that decision.

RESPECTFULLY SUBMITTED this 4th day of August, 2008.

ACLU OF WASHINGTON FOUNDATION

By: 

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ATTACHMENT A

2008 BITE OF SEATTLE MAP

MAP LEGEND

RESTAURANTS

1. The Vikings
2. Ziegler's Bratwurst Haus
3. Biringer Farms
4. Inta Juice
5. California Pizza Kitchen
6. Julia's Indonesian Kitchen
7. Jones BBQ
8. Crepe Tyme
9. Dancing Zorba
10. Famous Dave's BBQ
11. Panda Express
12. Twist
13. Tandoor Indian Restaurant
14. Bambuza Vietnamese Bistro
15. Delicious Asia
16. Elio Taste the Caribbean
17. Espi's Sausage & Tocino
18. Chutneys Grille
19. Outback Jack's
20. China Delight
21. Mrs. B's
22. New Orleans Cookery
23. The Frankfurter
24. Jasper's BBQ Catering
25. Gordon's Marchand Northwest Salmon
26. Schnoo Yogurt
27. Scotty's Northwest
28. Southern Kitchen
29. Sizzlin' Phillies
30. Kaleenka
31. Ballard Bros.
32. Biringer Farms
33. Pico de Gallo's Halibut Tacos
34. Thai Woodinville
35. Ali'i & Sumo's Hawaiian Grill
36. Klassique Kollections
37. Gyros! Gyros! Gyros!
38. Fajita Express

JUST A BITE!

J1. Kaosamai Thai
J2. Wolfgang Puck Catering
J3. Green Leaf
J4. Maggiano's
J5. Villa Victoria
J6. Divine

BOARDWALK

101. JH Sunglasses
102. JH Sunglasses
103. Northwest Home Improvement
104. ACS Seattle, LLC
105. 24 Hour Fitness
106. Microsoft
107. Matheny Chiropractic
108. Matheny Chiropractic
109. Restore Vision Center
110. American Laser Centers
111. Brinks Home Security
112. Light Speed Whitening
113. Evans Glass
114. Evans Glass

SIDEWALK SPECIALS

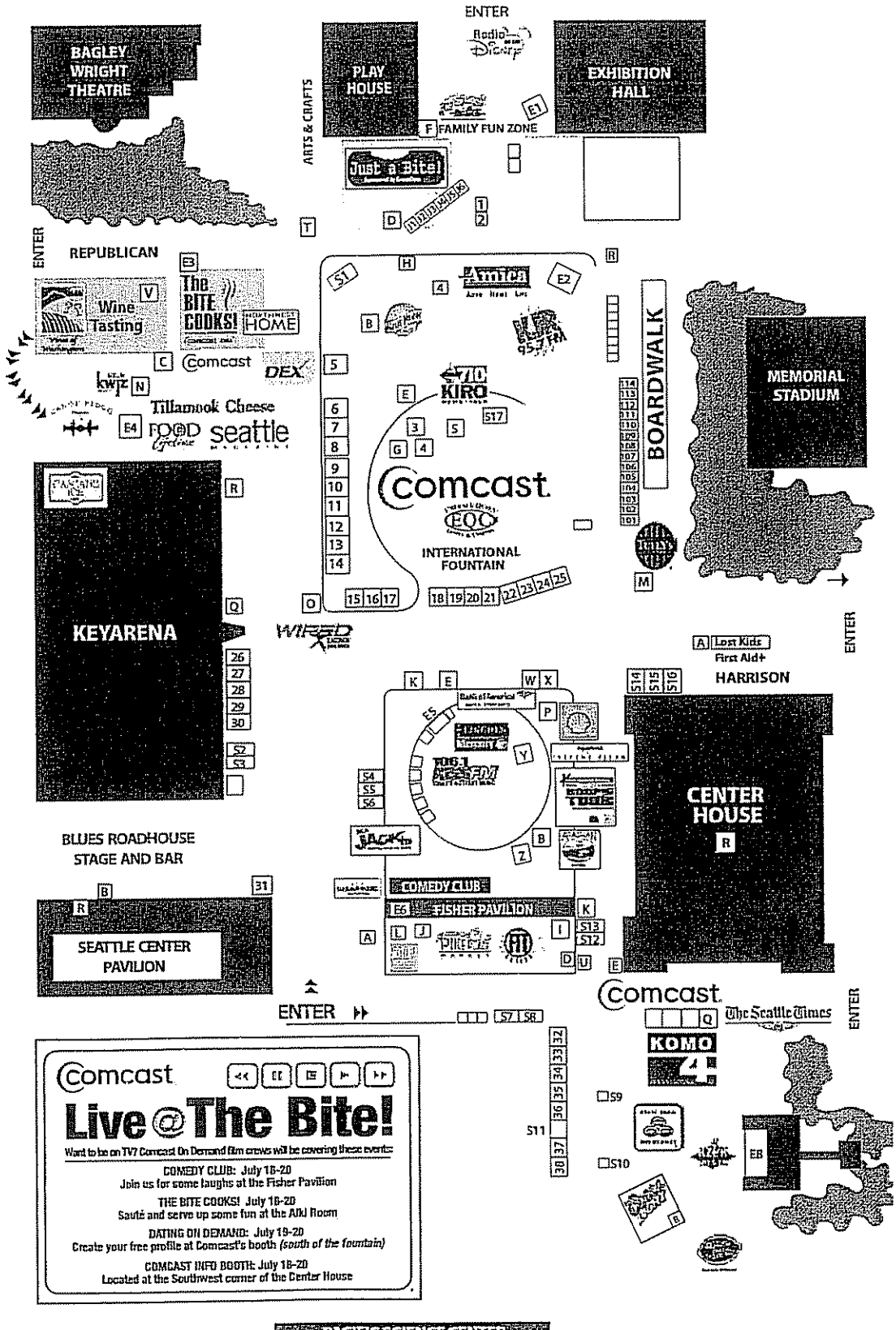
S1. The Corn Roaster
S2. Blue Elephant
S3. Margarita Village
S4. Oasis Bubble Tea
S5. Joe's Concessions
S6. Coconut Hut
S7. Irishman Enterprises
S8. Blue Elephant
S9. Shishkaberry's*
S10. The Frankfurter
S11. The Corn Roaster
S12. Authentic Hawaiian Shave Ice
S13. Julibee Tea & Bee Co.
S14. Snowie
S15. Hi's Fruit
S16. Coconut Hut

ALPHBET KEY

A. First Aid/Lost Kids
B. Beer Gardens
C. The Alley hosted by Tom Douglas sponsored by Tillamook Cheese
D. Just a Bite! sponsored by Groupdyne.com
E. Emerald Queen Casino
F. Family Fun Zone
G. News Talk 710 KIRO
H. Comcast Dating ON-Demand
I. CNN Fit Nation Tour
J. Pike Place Market
K. Event T-Shirts
L. One Organic
M. Tully's Coffee Café
N. Cascade Ice Water
O. Wired
P. Shell
Q. The Seattle Times
R. RESTROOMS
S. OPEN
T. CNN
U. Comcast
V. Vines of Washington Wine Tasting
W. Bank of America's Cheer Tour
X. OPEN
Y. Aquafresh
Z. US Olympic Basketball

ENTERTAINMENT STAGES

E1. Shishkaberry's*/Radio Disney AM 1250 Kids' Stage
E2. Amica Insurance/95.7 KJR
E3. Comcast/DEX- The Bite Cooks!
E4. Canoe Ridge Vineyard/98.9 KWJZ
E5. Lincoln Mercury/106.1 KISS FM
E6. Casadorez/96.5 JACK FM Comedy Club
E7. Blues Roadhouse Stage
E8. State Farm/102.5 KZOK



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CERTIFICATE OF SERVICE

I, Patricia D. Churchill, under penalty of perjury do hereby certify that I caused to be sent, via UPS 2nd day air, on this date, two copies of Brief *Amicus Curiae* of American Civil Liberties Union in Support of Appellee to the following attorneys:

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