

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**COPY**

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COMMUNITY ARTS ADVOCATES, INC.,  
and STEPHEN H. BAIRD,

Plaintiffs,

v.

CITY OF BOSTON;  
BOSTON POLICE DEPARTMENT;  
KATHLEEN M. O'TOOLE, in her  
capacity as Police Commissioner;  
BOSTON PARKS AND RECREATION  
DEPARTMENT; and  
ANTONIA POLLACK, in her capacity  
as Parks and Recreation Department  
Commissioner,

Defendants.

Civil Action No.

RECEIVED  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
FBI BOSTON FIELD OFFICE  
MAY 20 1981

COMPLAINT

1. This is a civil action in which Plaintiffs Community Arts Advocates, Inc. and Stephen H. Baird seek to defend the rights of public performers and artists in the City of Boston. More specifically, Plaintiffs challenge the constitutionality of ordinances of the City of Boston, a rule of the Boston Police Department, and the practices and policies of the City of Boston, the Boston Police Department, and the Boston Parks and Recreation Department, which for years and as recently as a few days ago have unlawfully prohibited Plaintiffs and others from playing musical instruments and performing on the public streets

and parks of the City of Boston. These unlawful prohibitions against public artistic expression violate Plaintiffs' rights under the First and Fourteenth Amendments to the Constitution of the United States and under the Constitution of the Commonwealth of Massachusetts.

2. Plaintiffs seek the following declaratory relief: (i) that Plaintiffs and others have the rights to play musical instruments, to perform, to display and offer works of art, and to solicit peacefully and receive consideration for these activities in the public streets, sidewalks, grounds and parks of the City of Boston (the "Artists' Rights"); and (ii) that Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 violate the First and Fourteenth Amendments to the United States Constitution and the Constitution of the Commonwealth of Massachusetts.

#### JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, the First and Fourteenth Amendments to the United States Constitution, the Constitution of the Commonwealth of Massachusetts, and Mass. Gen. Laws ch. 12 §§ 11H and 11I. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343 and 1367. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (e) because the Defendants are located in the

District of Massachusetts and the causes of action arose in this District.

#### THE PLAINTIFFS

4. Plaintiff Community Arts Advocates, Inc. ("CAA") is a non-profit Massachusetts corporation dedicated to expanding public awareness, participation in and support of the arts through performances and festivals, exhibits and workshops, publicity, educational forums, non-profit arts management consultation services, and collaborative projects. CAA has more than 30 members and has a place of business in Jamaica Plain, Massachusetts. CAA members include musicians, singers, actors, magicians, puppeteers, portrait artists, and caricature artists, among others. CAA has capacity to sue for violation of the Constitutional rights of its members pursuant to Federal Rule of Civil Procedure 17(b).

5. Plaintiff Stephen H. Baird is a citizen of the United States and a resident of Jamaica Plain, Massachusetts. Mr. Baird is the Executive Director of CAA, a musician and performer with over three decades of performance experience. Mr. Baird has performed in the United States and internationally, including at the Kennedy Performing Arts Center, New England Artists Showcases, and over five hundred college campuses, libraries, schools, parks, camps, television programs, festivals, concerts and theaters. Mr. Baird and his

performances have been featured in such publications as Time, Newsweek, People, The Boston Globe, The Chicago Tribune, The New York Times, and The American Bar Association Journal. Mr. Baird and his performances have been also featured in a Public Broadcasting Service documentary ("Street Singer") and a Discovery Channel documentary ("Millennium Music Series").

#### THE DEFENDANTS

6. Defendant City of Boston is a body politic and corporate entity, existing under the laws of the Commonwealth of Massachusetts and located in Suffolk County, Massachusetts. The City of Boston is incorporated and organized under Massachusetts General Laws chapters 39 and 40, and Article II of the Constitution of the Commonwealth of Massachusetts.

7. Upon information and belief, Defendant Boston Police Department is an agent of the City of Boston, acting under the City's direction and control and under color of state law.

8. Defendant Kathleen M. O'Toole is the Police Commissioner of the Boston Police Department.

9. Upon information and belief, defendant Boston Parks and Recreation Department is an agent of the City of Boston, acting under the City's direction and control and under color of state law.

10. Defendant Antonia Pollack is the Commissioner of the Boston Parks and Recreation Department.

### GENERAL ALLEGATIONS

11. The First and Fourteenth Amendments to the United States Constitution impose significant limits on the government's ability to regulate expressive activities. Live entertainment, including music and street performances, is constitutionally protected. Any restrictions imposed on any such expressive activities must be content neutral, narrowly tailored to serve a significant or substantial government interest, and leave open ample alternative channels for the type of expressive activity that is being restricted.

### CURRENT LAWS AND REGULATIONS

12. Boston Municipal Ordinances § 16-12.24 (Exhibit A) and Boston Police Rule 75 (Exhibit B) are unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution because they are not content neutral, are not narrowly tailored to serve a significant or substantial government interest, and do not leave open alternative channels for the type of expressive activities that are being restricted, and because they employ gender classifications that do not serve important governmental objectives.

13. Boston Municipal Ordinance § 16-12.24 states that:

No person, other than musicians in a lawful parade or procession or itinerant musicians licensed thereto by the Police Commissioner shall, in any street, except as a warning of danger, ring or cause to be rung any

bell, or use or cause to be used any musical or noise-making instrument.

14. Boston Police Rule 75, enacted pursuant to authority granted in Boston Municipal Ordinance § 16-12.24, places numerous unconstitutional restrictions on Plaintiffs' free speech and equal protection rights. For example, Section 1 of Boston Police Rule 75 states that:

Except as hereinafter provided no person shall play on a musical instrument in a street unless licensed to do so by the police commissioner.

15. As another example, Section 4 of Boston Police Rule 75 states that:

The police commissioner may grant licenses to play on musical instruments in the streets to suitable persons more than twenty-one years of age whose usual or principal occupation is that of an itinerant musician.

16. As another example, Section 6 of Boston Police Rule 75 states that:

No licensed itinerant musician, except on a license granted under section 3, shall play on a musical instrument in any public street on Sunday; nor within five hundred feet of any school house; nor within three hundred feet of any other building after he has been notified to desist by a police officer or an occupant of such building; nor in a public street in any part of the city between 9 P.M. and 9 A.M.; nor at any time except between 6 P.M. and 9 P.M. in the territory, including the boundary streets or parts of streets, inclosed [sic] as follows: Beginning in Bay State road at the intersection of University road, thence through Bay State road, Beacon, Somerset, Howard streets, Scollay square, Sudbury, Portland, Causeway, Commercial streets, Atlantic avenue, Kneeland, Washington, Hollis, Tremont, Stuart, and Eliot streets, Park square, Columbus avenue, Dartmouth

street, Huntington avenue, Hemenway, Boylston streets, Brookline, Commonwealth avenues, University road to point of beginning.

A map of the restricted areas of Boston is given to individuals upon obtaining an Itinerant Musician License from the Boston Police Department (Exhibit C).

17. As another example, Section 8 of Boston Police Rule 75 states in part that:

A female licensed itinerant musician shall not play on a musical instrument in a street unless she is accompanied by an adult male licensed itinerant musician.

18. As another example, Section 11 of Boston Police Rule 75 states that a licensed itinerant musician:

shall not carry and shall not display upon his instrument any advertisement or any special appeal for money, nor shall he go about with his instrument in the company of any person carrying such advertisement or presenting such appeal.

19. Law enforcement officers typically do not state a legal basis for their demand that artists stop exercising their Artists' Rights. However, artists could be charged with violation of numerous sections of the Boston Municipal Ordinance if they do not comply with an officer's demands.

20. The following sections of the Boston Municipal Ordinance may be applied in an unconstitutional manner to deprive Plaintiffs' of their Artists' Rights:

- (a) § 7-4.4 Control of Portions of Post Office, Dock and Faneuil Hall Squares;
- (b) § 7-4.6 Music;
- (c) § 16-2.2 Crying of Wares;
- (d) § 16-10.2 Obstruction to Travel;
- (e) § 16-10.4 Disorderly Conduct;
- (f) § 16-10.5 Compliance with Directions;
- (g) § 16-12.2 Loitering;
- (h) § 16-12.15 Throwing or Shooting on Streets;
- (i) § 16-12.27 Abusive Language; Soliciting in Streets;
- (j) § 16-18.1 Use of Sidewalks;
- (k) § 16-19.1 Use of Public Grounds;
- (l) § 16-19.2 Public Addresses, Vending, Etc.;
- (m) § 16-19.3 Permit for Use of Park Land for Demonstrations;
- (n) § 16-19.4 Profanity and Other Offenses;
- (o) § 16-26.1 Unreasonable Noise; General Prohibition and Definitions;
- (p) § 16-26.2 Disturbing the Peace;
- (q) § 16-26.8 Prohibitions Against Loud Amplification Devices in Public Ways or Places;
- (r) § 16-26.10 Enforcement;
- (s) § 16-41.1 Prohibiting Aggressive Solicitations; and
- (t) § 16-41.2 Prohibited Acts.



21. For example, Boston Municipal Ordinance § 16-10.2, Obstruction to Travel, as written could bar artists from exercising their constitutionally protected right to perform in public streets and parks, states in part:

No person shall, within any market limits, so occupy or obstruct any sidewalk as not to leave a clear and direct passage for travellers thereon..

22. As another example, Boston Municipal Ordinance § 16-10.4, Disorderly Conduct, as written could bar artists from exercising their constitutionally protected right to perform in public streets and parks, states:

No person shall, within any market limits, play any game, lie down ,sleep, or behave in a noisy, disorderly, or riotous manner, or scuffle, or throw any missile or thing whatsoever.

23. As another example, Boston Municipal Ordinance § 16-12.2, Loitering, as written could bar artists from exercising their constitutionally protected right to perform in public streets and parks, states in part:

No person shall saunter or loiter in a street in such a manner as to obstruct or endanger travellers or in a manner likely to cause a breach of the peace or incite to riot..

24. As another example, Boston Municipal Ordinance § 16-2.2, Crying of Wares, as written could bar artists from exercising their constitutionally protected right to sell compact discs or other original artwork, states in part:

No person hawking or peddling, selling, or exposing for sale any articles, shall cry his wares to the disturbance of the peace and comfort of the inhabitants of the City...

25. As another example, Boston Municipal Ordinance § 16-19.1, Use of Public Grounds, as written could bar artists from exercising their constitutionally protected right to perform in public parks, states in part:

No person shall, in or upon the Common, Public Garden, or other public grounds of the City, walk, stand, or sit upon the grass...

26. As another example, Boston Municipal Ordinance § 16-19.2, Public Addresses, Vending, Etc., as written could bar artists from exercising their constitutionally protected right to amplify their performance in public streets and parks, states in part:

No person shall, in any of the public grounds, use any device intended to amplify or broadcast sound using a megaphone, loud speaker, or any other amplification device...

27. Many active artists, including CAA members and Mr. Baird, do not exercise their Artists' Rights due to the threat of enforcement of Boston Municipal Ordinance § 16-12.24, Police Rule 75 and other Boston laws or regulations.

28. On a number of occasions over the past few years, Mr. Baird and other CAA members have been prohibited from exercising their Artists' Rights.

### HARASSMENT OF STREET ARTISTS

29. As one recent example, on July 18, 2004, Stephen H. Baird was entertaining a group of passersby on the Boston Common by playing an acoustic guitar and singing a ballad. Mr. Baird was told by a Boston Parks Department Ranger that he was not allowed to perform music in the Boston Common, even though Mr. Baird had an Itinerant Musician License from the Boston Police Department. The Ranger, identified by his call number, 217, stated that a permit was required from the Parks Department and that Mr. Baird must move off of the path and onto the grass. The Ranger called a Mounted Ranger to the scene and repeated his demand that Mr. Baird move.

30. As another recent example, on June 19, 2004, Stephen H. Baird was entertaining a group of passersby on the Boston Common using a First Century precursor to the piano called the hammered dulcimer. Mr. Baird then was told by a Boston Parks Department Ranger that he was not allowed to perform music in the Boston Common, even though Mr. Baird presented his Itinerant Musician License to the Ranger. The Ranger initially stated that a permit was required from the Parks Department but later stated that the Parks Department will not issue permits for performers. The Ranger initially refused to identify himself but eventually provided his call number, 217. Mr. Baird then moved from the location where he first encountered the Ranger

and managed to continue his performance at another location on the Common.

31. Upon information and belief, Park Rangers have no authority to arrest, to threaten to arrest, to enforce law, or to rely on permitting schemes or other means to restrict Plaintiffs' rights.

32. As another example of unconstitutional enforcement, in or about June 2003, Larry Meyerhoff, a CAA member and musician who performs traditional Irish music on instruments such as the hammered dulcimer, was told by an officer of Boston Police Department that he was not allowed to perform in Dock Square and the area surrounding Faneuil Hall, even though Mr. Meyerhoff had an Itinerant Musician License from the Boston Police Department and presented the Itinerant Musician License to the officer. Mr. Meyerhoff has since left the City of Boston to pursue his interests in New York.

33. As another example, in or about August 2003, Rosanna Lee Cohen, a CAA member, singer and guitar player known by the name Rosanna Lee, was repeatedly asked by officers of Boston Police Department to stop her performances on Newbury Street, even though Ms. Lee had an Itinerant Musician License from the Boston Police Department and presented the Itinerant Musician License when confronted by the officers. Ms. Lee has since left the City of Boston to pursue her career in Southern California.

34. Throughout the past 30 years, Plaintiff Stephen H. Baird and others have attempted to work out a reasonable solution with the City of Boston, Boston Police Department, Boston Parks and Recreation Department, merchants in the Downtown Crossing Area and a Boston City Councilor regarding the Artists' Rights. Despite the efforts of Mr. Baird and others, Boston Municipal Ordinance § 16-12.24, Boston Police Rule 75, and other laws remain in force in violation of the First and Fourteenth Amendments to the United States Constitution and the Constitution of the Commonwealth of Massachusetts.

**NEED FOR RELIEF**

35. Despite Mr. Baird's efforts, the City of Boston has taken no action to rescind or revise Boston Municipal Ordinance § 16-12.24.

36. Although Boston Police Department has tentatively agreed to rescind Police Rule 75, see Letter from Harris to Cotter of June 29, 2004 (Exhibit D), and a Police Department representative reported that the Rule has been rescinded, Plaintiffs have yet to receive written indication that Police Rule 75 has been rescinded, that a revised Rule has been approved, or that the revised Rule adequately protects the constitutional rights of Plaintiffs and other performers and artists.

37. Merely rescinding or revising Police Rule 75 will not adequately protect the constitutional rights of Plaintiffs and other performers and artists. The parks and public spaces of the City of Boston are patrolled not only by Boston Police Department, but also by the Boston Parks Department, the Massachusetts State Police, and the Boston Municipal Police. To be adequate, any resolution must reach all law enforcement personnel including those outside the jurisdiction of Boston Police Department and its Police Rules.

38. Unless Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 are declared unconstitutional and an adequate solution is implemented, and unless the Defendants cease their unconstitutional enforcement actions, Plaintiffs will continue to be deprived of their constitutional rights.

#### COUNT I

##### Violation of Constitutional Rights

39. The Plaintiffs repeat and reallege the allegations of paragraphs 1 through 37 above, as though fully set forth in this Count.

40. Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 are unconstitutional in violation the Plaintiffs' free speech and equal protection rights under the First and Fourteenth Amendments to the Constitution of the United States and under the Constitution of the Commonwealth of Massachusetts.

41. The restrictions imposed by Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 are not content neutral.

42. The restrictions imposed by Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 are not narrowly tailored to serve a significant or substantial government interest.

43. The restrictions imposed by Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 do not leave open ample alternative channels for the type of expressive activity that is being restricted.

44. The restrictions imposed by Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 employ gender classifications that do not serve important governmental objectives.

45. Plaintiffs have suffered and will continue to suffer harm as a result of the unconstitutional restrictions of Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 and the unconstitutional actions of the Boston Police Department, the Boston Parks and Recreation Department, and the Boston Municipal Police as described in part in this Complaint.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs request that this Court:

1. Enter a declaratory judgment that (i) Plaintiffs and others have the rights to play musical instruments, to perform, to display and offer works of art, and to solicit peacefully and

receive consideration for these activities in the public streets, sidewalks, grounds and parks of the City of Boston; and (ii) Boston Municipal Ordinance § 16-12.24 and Boston Police Rule 75 violate the First and Fourteenth Amendments to the Constitution of the United States and the Constitution of the Commonwealth of Massachusetts.

2. Enjoin Defendants on a preliminary and permanent basis from violating Plaintiffs' and others' rights to play musical instruments, to perform, to display and offer works of art, and to solicit peacefully and receive consideration for these activities in the public streets, sidewalks, grounds and parks of the City of Boston.

3. Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988, Mass. Gen. Laws ch. 12 §§ 11H and 11I, and any other applicable authority.

4. Grant Plaintiffs such further relief as the Court deems just and proper.

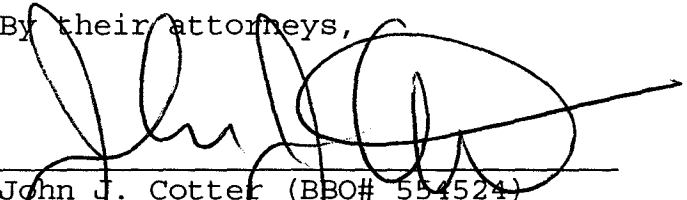


Dated: Boston, Massachusetts  
July 20, 2004

Respectfully submitted,

COMMUNITY ARTS ADVOCATES, INC.  
and STEPHEN H. BAIRD,

By their attorneys,



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