

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JASON GARDNER
Plaintiff,

v.

CITY OF BOSTON,
Defendant.

CIVIL ACTION NO.

DECLARATION OF JASON GARDNER

I, Jason Gardner, declare and state as follows upon personal knowledge:

1. I am a street performer specializing in magic and escape. I have also performed as a musician in the past.
2. I have performed publicly as a street performer for 15 years.
3. I currently reside in Cambridge, Massachusetts.
4. I have performed as a street performer in Boston, Massachusetts, Cambridge, Massachusetts, Vermont, Virginia, New York City and around the world.
5. I have often performed publicly in the streets and parks of the City of Boston (the "City"). In the past I have been told by the City of Boston police that I could not perform in various areas around the City of Boston, including on Newbury Street, Lansdowne Street, Sam Adams Park and Boston Common.
6. On Saturday, April 2, 2005, I went to Sam Adams Park, which is also known as Dock Square, with the intention of performing there. As I waited to unpack my bag and begin performing, I began talking to a Boston Police Officer who was working there. I told him I was waiting to begin performing. We were talking when a man, who I did not know but who seemed to work for Faneuil Hall Marketplace, came up and complained to the Boston Police Officer that I was not allowed to perform in Sam Adams Park. The Police Officer, a man named Tom, said that technically I could perform there, but it would be better if I went and performed elsewhere. The unknown man said that if I were performing as a musician he could not stop me, but since I was not a musician then I could not perform there without hiring a City of Boston Police detail and I could not solicit money in any way. The officer said that he was supposed to leave the street performers alone that weekend, and that the Boston Police Department was having a meeting on the following Monday about street performers. He said I was allowed to

perform but that it would be better if I moved somewhere else. The unknown man then said that a truck was coming to unload equipment in the spot where I was setting up anyway.

7. Because of the confusion, and based in part on the Police Officer's recommendation, I decided to move and to perform on Boston Common instead. I began performing on Boston Common using a small wireless microphone attached to a small portable amplifier. After I had done two shows with the microphone, a Boston park ranger came over to me and told me that I needed a permit if I was going to use any amplification in the park. He said I could leave the park, or I could work without the microphone. I did two more shows without a microphone and then left Boston Common.

Signed under the pains and penalties of perjury, this the 24th day of May, 2005.

Jason Gardner