

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**COMMUNITY ARTS ADVOCATES, INC.** )  
**and STEPHEN H. BAIRD,** )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**CITY OF BOSTON,** )  
**Defendant.** )

**CIVIL ACTION NO. 04-11618-NG**

**DECLARATION OF JEFF KESSES**

I, Jeff Kesses, declare and state as follows upon personal knowledge:

1. I am a portrait artist. I often perform publicly as a portrait artist, setting up on the streets and sidewalks of the City of Boston and drawing passers-by.
2. I have worked as a public portrait artist since the spring of 2004.
3. I currently reside in Boston, Massachusetts.
4. In September of 2004, I attempted to set up to draw public portraits at downtown crossing in Boston. I noticed that a hat vendor was watching me as I set up. When a Boston Police Officer came by, the hat vendor spoke to the officer. The police officer then came over to me. I showed the officer my Vendor's Permit from the City of Boston. The officer said that the permit was not valid in downtown crossing. The officer said I needed a permit from the Downtown Crossing Association. The Officer said I had to leave. I packed up my materials and left.
5. I then went to set up by South Station and was able to draw in that space. However, this space is not nearly as good a space as downtown crossing for interacting with passers-by.
6. I possess a Vendor's Permit from the City of Boston. The City gave me the permit with a map which appears to me to cover most of the City of Boston, including downtown crossing. However, I have been told by police that the Vendor's Permit only permits me to engage in public drawing in certain specified and more limited areas and during certain times.
7. On Sunday, June 19, 2005, I again attempted to set up to draw publicly in the City of Boston. I set up to draw and sell my drawings around 11am on Boston Common. I was permitted to draw and sell my art until about 2pm. At that time, a Boston Park Ranger named Reggie Sampson came over to me and told me that I had to have a Vendor's

Permit if I wanted to be in Boston Common.

8. It was my understanding, based on a lawsuit filed by Stephen Baird in Federal Court, that the City had agreed, and the Court had ordered, that artists could draw in the public streets and parks of Boston, and that artists could sell their drawings without a Vendor's Permit. I therefore believed that I no longer needed my Vendor's Permit.
9. After being told by the Park Ranger that I could not be in Boston Common without a permit, I left Boston Common. On Monday, June 20, 2005 I called the Boston Parks Department to ask why I could not draw on the Common without a permit. I was told that I needed to talk to other officials at the Park Department Offices. Therefore, I went, on Thursday, June 23, 2005, to the Park Rangers' offices at 1010 Massachusetts Avenue in Boston. At that time I spoke with an Official from the Park and Recreation Department. I asked why I needed a permit to draw and sell my art. He told me that he was aware of the Court case, but that he had not been given any clear indication by the City of who could and could not perform in the streets and parks of Boston, and so he was not sure if I could draw in the Common. He said he was looking for answers about that himself. He also told me that I should talk to the Boys and Girls Club of Boston, as they are ultimately responsible for that kind of permitting.
10. I therefore left the Park Rangers' offices and went to the Boys and Girls Club, located at 50 Congress Street in Boston. At those offices, I spoke with Jack Hurley, who is in charge of the Boys and Girls Clubs. I told Mr. Hurley that I had been told I could not sell my art on Boston Common, that I could not draw on Boston Common, and that I was told I needed a permit. I told him that the Park Rangers had directed me to him. He said that they usually prosecute people who sell things without a license fully, but that he would make an exception in my case, since I was an artist and they liked artists. He said that he would only charge me \$250 per month in rent in order to get a permit to sell my art. He said that such rent was required to cover costs of liability insurance in case I hit someone while I was selling my art. I declined to pay him any money and I left.
11. On Saturday, June 25, 2005, I again attempted to sell my art in the City of Boston. I set up to draw and sell my art on the sidewalk in front of Boston City Hall, across the street from Sam Adams Park. I was approached by a security guard in a gray uniform with blue patches, and I was told that I could not draw pictures or sell art without a permit. I therefore packed up my materials and left.
12. Based on these incidents I am concerned that I will not be allowed to draw and sell my art in public spaces in the City of Boston, and I am deterred from continuing to try to do so.

Signed under the pains and penalties of perjury, this the 26th day of June, 2005.

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Jeff Kesses