

CCLU and No Justice No Peace,

Petitioners,

v.

C-BART,

Respondent.

On August 8, 2019, No Justice, No Peace (NJNP), an economic justice advocacy group, sent a text message to its friends and followers:

We have had enough! The time is now and we will make our voices be heard by any means necessary. Be prepared to stand your ground and be warriors for truth! Specific instructions to follow.

The message also gave instructions to carry masks, wear black and converge *en masse* on three Chesapeake Bay Area Rapid Transit (C-BART) train stations. The recipients were divided into three groups: green, yellow and red. Each group was instructed to meet at one of the three stations at 11:00 am on August 11, 2019. According to a spokesperson for NJNP, participants were to engage in acts of civil disobedience (*e.g.*, eat and drink on the trains) and acts of civic education (*e.g.*, use “human megaphones” to educate passengers on the corporate takeover of America. Specific instructions as to the acts of disobedience and education were to be sent to each member of each group at 11:05 am (i.e. once everyone had arrived at the stations.) Each group/cell was compartmentalized to avoid compromising the secret master plan and there were different instructions planned for each group.

At 9:00 am on August 11, C-BART learned of NJNP’s proposed plan though they were not aware of any details, only that NJNP was planning to have “flash mobs” descend on C-BART stations. Fearing the worst, C-BART turned off its underground fiber optic network and blocked all cell and Wi-Fi service in C-BART stations. C-BART spokesman Linton Johnson said that the flash mobs were “hell-bent on disrupting train service” and that it was C-BART’s responsibility to protect law-abiding passengers as well as public property. Mr. Johnson noted that in July 2011 massive riots in London were amplified by groups using social networks and phones to coordinate looting and arson. Johnson noted that following the London riots, British Prime Minister David Cameron told Parliament the government should make it illegal to use such systems to organize mayhem.

“In the Bay Area, C-BART security is encountering crowd behavior like we’ve never seen before,” Johnson said. “The difference between 10 years ago and now is massive,” he said. “Technology has just made it easier to organize faster. If people are using social media for violence, we need to stop them.”

Following C-BART’s actions, the planned protests fizzled. NJNP groups formed at the stations but it was not clear who was in charge. Many protesters hung around the station entrances exhorting passersby to “Take Back America from its corporate overlords.” Some boarded trains handing out literature to passengers. Protests were generally peaceful. Police made arrests of only two individuals, both of whom sought to block the entrance to a train station.

At 5:00 pm, Charlie Chaos, President of NJNP issues a statement on behalf of the group:

Today, C-BART attempted to cancel culture. They interfered with the lawful right of peaceful Americans to express our disagreement with the state of our county and our government. But we will not be silenced and we will not be cancelled. And we will not allow C-BART to make the First Amendment a nullity. We will see C-BART in court.

One week later, the Columbian Civil Liberties Union (CCLU), on behalf of Chaos and NJNP filed suit in federal district court for the district of Columbiana challenging against C-BART alleging that its actions violated the First Amendment. The suit sought monetary damages and an injunction limiting C-BART’s discretion in shutting off its fiber optic network. In a statement, CCLU staff attorney Michael Risher said: “Shutting down communications networks will not prevent violent behaviors. To the contrary, it is likely to increase such behavior since people can’t exercise their First Amendment Rights.” Moreover, he added, “the Middle East is showing an awakening of freedom, which has been aided by modern technology. Given this, it is ironic and frightening that C-BART would and did shut down legal, constitutionally protected communication.”

In response, Johnson noted that riders’ First Amendment rights need to be balanced with other riders’ right to safety, which the planned flash mob threatened.

The United District Court of the District of Columbiana dismissed the suit on the grounds that it failed to state a claim on which relief could be granted (*i.e.*, it failed to raise a cognizable First Amendment issue). The Court of Appeals for the 13th Circuit affirmed. Petitioners CCLU have filed a petition for *certiorari*. The Supreme Court of the United States has granted *certiorari* to consider the following question:

Did C-BART’s actions in turning off its fiber optic network violate petitioner’s rights under the First Amendment of the United States Constitution?

The parties should address two specific issues:

1. Did petitioners have a First Amendment right in the instant case?
2. If yes, were respondents justified in limiting this First Amendment right?