


# The Role of Courts when Conflicts Polarize Communities

Judge Dan Aaron Polster  
William Froehlich  
Leigh Anne Newcomer




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## Divided Community Project

*The Divided Community Project strengthens community efforts to transform division into action. The project focuses on increasing resilience and building trust to make real progress in identifying and meaningfully addressing the causes of community division.*

CRS Responds      DCP support Planning Ahead






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## Court-Sponsored Intervention in Advance of Litigation



Javcon117, "Frostburg State University Arch Entryway", October 3, 2009, CC BY-SA 2.0

- Maryland's MARCO – Mediation and Conflict Resolution Office
  - Fellows Program
  - Frostburg Administrators Participate
  - Frostburg Administrators Utilize the program to response to community division
  - MARCO provides short-term grants to support divisive community issues




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Ryan Thomas, "Cincinnati Riots 2001", June 11, 2008, CC BY-NC-ND 2.0

### Court Intervention During Litigation

- Pending litigation
  - Plaintiffs Cincinnati Black United Front & ALCU of Ohio
  - Defendants City of Cincinnati & FOP
  - Issues: racial profiling and discriminatory practices
  - Judge Diott persuades litigants to mediate focusing on addressing "social conflicts at the core of the police-community divide"
- African-American youth, **Timothy Thomas**, shot by police
  - Days of riots
  - DOJ becomes involved
- Collaborative Agreement Developed with expanded stakeholder group



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Ryan Thomas, "Cincinnati Riots 2001", June 11, 2018, CC BY-NC-ND 2.0



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### Cleveland agrees to pay \$6 million to settle Tamir Rice lawsuit, won't admit any wrongdoing



The city of Cleveland will pay \$6 million to settle a lawsuit filed by the parents of Tamir Rice, a 12-year-old boy who was shot by a police officer in 2014, according to a settlement announced Monday.

Under the terms of the agreement, which will have to be approved by a probate court, the city will pay to settle the case and to fulfill any court-ordered costs. The bulk of the money will be paid to Rice's estate.

The settlement does not include any admission of wrongdoing, U.S. District Judge Dan Polster wrote in a one-page document filed Monday.

"Although Justice is essential to any sense of fairness, an amount of money was agreed upon by the families of both Tamir Rice and the officer who shot him," Polster said.

### Intervention after a Traumatic Incident

#### Cleveland settles federal lawsuit with families of police chase victims Timothy Russell, Malissa Williams

- In an interview Wednesday morning, **Polster** would not discuss settlement figures, saying only "I'm not going to say anything beyond the order."
- Unlike countless other major lawsuits filed in federal court, the legal fight involving the families' estates and Cleveland appears unique: *There were no depositions taken, and neither side submitted any major filings.*

John Cangilla, [Cleveland settles federal lawsuit with families of police chase victims Timothy Russell, Malissa Williams](#), CLEVELAND.COM, July 17, 2014.

Mark Berman & Wesley Lowery, [Cleveland agrees to pay \\$6 million to settle Tamir Rice lawsuit, won't admit any wrongdoing](#), WASHINGTON POST, April 25, 2016.



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**ACLU hails deal to shrink RNC security zone as win for protestors**


**Intervention in Advance of Political Protests**

25 Days before the convention Judge Gwin "forces the city to redraw the boundaries to the so-called 'event zone'".

Eric Heilig, [Federal Judge Overturns Cleveland's restrictions on RNC protests](#), CLEVELAND.COM, updated June 24, 2016, posted June 23, 2016.

"Judge Dan Polster, who helped mediate the initial court-ordered negotiations, will remain in place to see out their provisions."

Gregory Kriep, [ACLU hails deal to shrink RNC security zone as win for protestors](#), CNN politics, June 29, 2017.




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# THE DIVIDED COMMUNITY PROJECT

[go.osu.edu/dcp](http://go.osu.edu/dcp)

*The Divided Community Project strengthens community efforts to transform division into action. The project focuses on how communities can respond constructively to civil unrest as well as on how they can identify and meaningfully address the reasons underlying community division. Current initiatives include establishing pilot programs that test differing models for communities to develop plans for identifying and addressing practices that trigger civil unrest; designing and implementing dispute resolution processes that address systemic changes; and, developing conflict assessment tools and protocols that convert community division into positive action.*

## OUR STEERING COMMITTEE:

- **Nancy Rogers**, Professor Emeritus, The Ohio State University Moritz College of Law, and former Ohio Attorney General;
- **Joseph (“Josh”) Stulberg**, Moritz Chair in Alternative Dispute Resolution, The Ohio State University Moritz College of Law, and mediator in community conflicts;
- **Susan Carpenter**, mediator in community conflicts, trainer and co-author of *Mediating Public Disputes*;
- **Chris Carlson**, public policy mediator and Chief Advisor, Policy Consensus Initiative;
- **Sarah Cole**, John W. Bricker Professor of Law and Director, Program on Dispute Resolution at The Ohio State University Moritz College of Law, mediator and arbitrator.
- **Michael Lewis**, JAMS mediator, arbitrator, ombudsman, court monitor and special master with decades of complex dispute resolution experience;
- **Craig McEwen**, Professor Emeritus, Bowdoin College, and social scientist whose research focuses on mediation and dispute resolution;
- **Sarah Rubin**, Program Manager, Public Engagement, California Institute for Local Government;
- **Andrew Thomas**, mediator in community conflicts and Community Relations and Neighborhood Engagement Director, City of Sanford, Florida.

## OUR LEADERSHIP:

- **Director Grande Lum**, Gould Research Fellow and Lecturer at Stanford Law School and former Director of the Department of Justice’s Community Relations Service. [Lum.23@osu.edu](mailto:Lum.23@osu.edu).
- **Associate Director William Froehlich**, Langdon Fellow in Dispute Resolution. [Froehlich.28@osu.edu](mailto:Froehlich.28@osu.edu).

## DCP RESOURCES

1. *Divided Communities and Social Media (2017)*
  - Strategies for community leaders dealing with community division against the backdrop of the challenges and opportunities of social media, [go.osu.edu/DCPsm](http://go.osu.edu/DCPsm)
2. *Community Preparedness and Assessment Test (2017)*
  - Online tool for communities to quickly assess community resilience, [go.osu.edu/DCPcpat](http://go.osu.edu/DCPcpat)
3. *Key Considerations for Community Leaders Facing Civil Unrest (2016)*
  - A checklist to consider when a community faces civil unrest and when that community begins to build consensus about dealing with the underlying problem, [go.osu.edu/DCPkc](http://go.osu.edu/DCPkc)
4. *Planning in Advance of Civil Unrest (2016)*
  - Offers points to consider for a community that seeks to develop a strategy to deal with division before it escalates into civil unrest, [go.osu.edu/DCPpia](http://go.osu.edu/DCPpia)

*The Ohio State University Moritz College of Law Program on Dispute Resolution serves as the host institution.*

*The JAMS Foundation provides significant support for the Project.*

*The Kettering Foundation partnered in the Project’s early work.*

*The Jacques M. Littlefield Foundation and AAA-ICDR Foundation along with Ohio State University Emeritus Academy and The Ohio State University Democracy Studies Program support the project.*



THE OHIO STATE UNIVERSITY

MORITZ COLLEGE OF LAW



## **Judicial Intervention in Communities in Conflict**

**By Leigh Anne Newcomer\***

In an era of division and unrest, courts are an overlooked resource for bridging divided communities. If utilized properly in the right setting, courts can prevent conflict from escalating and “add the critical dimension of getting people in divided communities to deliberate about ways to solve, or at least ameliorate, the problems underlying their differences.”<sup>1</sup> Attorneys with mediation experience can contribute to resolving issues in their own communities by recommending court involvement at the right moments and for the right conflicts.

This article reviews two instances of constructive court involvement—one by a state court system prior to any litigation and one by a federal district court that mediated a conflict well beyond the issues in pending litigation and involved more than the parties to the dispute. Then the article examines the arguments against court involvement beyond the parties and issues in pending cases. It suggests that courts and attorneys who recommend the mediation can deal with these arguments—which raise valid concerns—through appropriate structuring, effective timing, and choice of conflicts involving the courts.

Courts have the potential to contribute significantly to communities in conflict and often have advantages, as illustrated below in the two success stories. Some community members may be distrustful of public officials, and as a perceived neutral; courts may be able to better engender trust and engage stakeholders in an intervention process. A court can also help provide critical local intervention when other state or local officials cannot balance the tensions between accountability and creating the requisite climate for dispute resolution processes. In many instances, courts have broadened cases to deal with conflict well beyond the issues in dispute to come up with a widely supported agreement for sustainable change. Furthermore, sponsoring community intervention does not necessarily undermine confidence in the justice system if court-

appointed intervenors maintain neutrality, act on their promises and communicate their actions in a way that the public can understand, and allow people a forum express to their views. Court-appointed intervenors can perform these functions while simultaneously respecting people and their rights.

State and federal district courts have engaged in innovative efforts by both creating ways to proactively address problems in divided communities, and providing a forum to constructively discuss and resolve issues after unrest has occurred. Interventions by the Maryland Court of Appeals and the U.S. District Court for the Southern District of Ohio in Cincinnati illustrate how courts can be well suited as intervenors in communities in conflict.

### **Court-Sponsored Intervention Before Litigation**

Maryland's highest court, the Maryland Court of Appeals, has an office, the Mediation and Conflict Resolution Office (MACRO), which intervened when racial tensions formed between students at Frostburg State University and residents of the town. When two African-American students were murdered by other African-American students in back-to-back years, Frostburg residents responded by denouncing the import of violence that the more racially diverse university brought to the town.<sup>2</sup> Outraged students responded by characterizing town residents as racists and gained extensive statewide media coverage of their concerns. The town was sharply divided, and Frostburg State University officials knew something had to be done before tensions developed into civil unrest. The university vice president, who had attended MACRO's fellows program, worked with a professor to submit a proposal to MACRO to intervene in the Frostburg conflict.

The judiciary supported Frostburg through a Memorandum of Understanding (MOU) between the Maryland Court of Appeals and the university that provided funding for a facilitator to intervene in the divided Frostburg community. MACRO provides short-term grants and

monitors the conflict without passing on information about the details to the Court of Appeals judges. A facilitated dialogue took place between students and community members over the course of two years and is still ongoing. The design team used university resources to create a video and social media campaign. The project's goals were outreach, education, and bringing people together for a community dialogue.

Numerous benefits surfaced from this process. University police, township police, the mayor, church, community leaders, university students, and residents had a forum to constructively address community concerns. Other community programs also emerged. An Adopt a Student Program was formed where the more diverse university student population would tutor high school students from local families in town, in exchange for meals. By intervening in Frostburg proactively and establishing a community dialogue, facilitators may have prevented a less constructive outcome resulting from unrest from occurring.

### **Court-Sponsored Intervention by Moving Beyond the Issues and the Participants Involved in Pending Litigation**

The U.S. District Court for the Southern District of Ohio in Cincinnati's appointment of a mediator and structuring of a mediation demonstrates how a federal court can intervene following unrest and provide a forum for engaging parties to litigation and community leaders in a planning initiative to establish new processes for community problem solving. The need for reform became evident after years of lawsuits filed by African-Americans and highlighted by the Cincinnati Black United Front (BUF) and the American Civil Liberties Union of Ohio Foundation, Inc. (ACLU) filing a class action suit against the City of Cincinnati and the Fraternal Order of Police alleging racial profiling and discriminatory law enforcement practices.<sup>3</sup>

The key player in converting the pending litigation to collaborative problem solving was U.S. District Judge Susan Dlott.<sup>4</sup> Judge Dlott persuaded the parties to agree to set aside the



litigation and pursue mediation focused on addressing the “social conflicts at the core of the police-community divide.”<sup>5</sup> She invited special master mediator, Jay Rothman, to design and facilitate the mediation process using participatory and collaborative procedures to explore improving police-community relations and addressing racial injustice.<sup>6</sup> Though the parties had made progress by agreeing to halt litigation and explore potential reforms through mediation, riots soon broke out following that agreement after Cincinnati police shot an African-American youth named Timothy Thomas.<sup>7</sup>

Cincinnati “endured several days of demonstrations and rioting; injuries to demonstrators, police, and people driving by; and scores of arrests.”<sup>8</sup> The riots grabbed the attention of city leaders and renewed their commitment to participate in the collaborative process.<sup>9</sup> The Cincinnati Black United Front (BUF), the American Civil Liberties Union of Ohio Foundation, Inc. (ACLU), the Cincinnati City and Police Administration, and the Cincinnati Fraternal Order of Police became formally constituted as an advisory group for the collaborative effort.<sup>10</sup> The mayor of Cincinnati also decided to get the Department of Justice (DOJ) involved.<sup>11</sup> The parallel dispute resolution and DOJ tracks proved key, as Judge Dlott later called the head of the civil rights division at DOJ and asked to consolidate negotiations.<sup>12</sup> It is important to note here that Judge Dlott charged the parties with paying for the mediation process, and one of the plaintiffs’ attorneys found a grant to fund the initiative.<sup>13</sup>

The result was a Collaborative Settlement Agreement<sup>14</sup> between parties and a consent decree between Cincinnati and DOJ.<sup>15</sup> In the Collaborative Agreement, the police officers and community members agreed to become proactive partners in community problem solving; build relationships of respect, cooperation and trust within and between police and communities; improve education, oversight, monitoring, hiring practices and accountability of the Cincinnati

Police Department; ensuring fair, equitable, and courteous treatment for all; and create methods to establish the public's understand of police policies and procedures and recognition of exceptional service in an effort to foster support for the police.<sup>16</sup> In the consent decree, DOJ recommended, and the parties agreed to, eighty changes to then-existing police practices.<sup>17</sup> Some of the recommendations included a revised K9 (police dogs) policy, response to mental health incidents, use of force, and increased training for Cincinnati police officers (1,000 hours of additional training before beginning employment and mandatory continuing education). An official signing ceremony was held to symbolize this monumental agreement on April 12, 2002, and the U.S. Attorney General signed on behalf of DOJ.<sup>18</sup>

The Collaborative Agreement set forth a five-year timeline and called for independent monitoring to ensure compliance with its terms.<sup>19</sup> Saul Green, former U.S. attorney for the Eastern District of Michigan, was hired as the independent monitor and oversaw the implementation of the agreed to police reforms in Cincinnati.<sup>20</sup> He formed an eight-member team comprised of law enforcement and experts in community/police relations.<sup>21</sup> He and his team frequently met with the city to discuss new policing methods.<sup>22</sup> Saul helped the police make improvements such as better analyzing the calls they received.<sup>23</sup> He cautioned them to not just be reactive in performing their duties, but to also be proactive and go out and talk to people about what is going on in their communities.<sup>24</sup> These new procedures also strengthened the police department's relationship with social services.<sup>25</sup>

The momentum continued to build. After introducing the use of computer statistics in policing, the fourth year of the Collaborative Agreement became a critical turning point for the city.<sup>26</sup> By the end of the fifth year, Cincinnati police had complied with all eighty recommendations from DOJ.<sup>27</sup> Motivated by the program's success, the police asked for an

extension, and Judge Dlott supervised the process for a sixth year.<sup>28</sup> In total, she monitored compliance from 2002-2008.<sup>29</sup>

Even though fifteen years have passed since its inception, the Collaborative Agreement is a living document.<sup>30</sup> The citizens' complaint authority established by the Collaborative Agreement has remained in place and has even increased its number of staff members during the last decade.<sup>31</sup> The Agreement and resulting improved police/community relations have also dramatically changed the face of the city.<sup>32</sup> The downtown area has vastly improved.<sup>33</sup> People feel safer now and enjoy areas that were once considered too dangerous to either live or maintain establishments.<sup>34</sup>

This model can be applied in municipal and county settings as well.<sup>35</sup> For example, the leaders of these localities are currently working out the problems of the sewer district, which is run by the city, but owned by the county.<sup>36</sup> A further application involved repairing the city of Cincinnati's insufficient pension plan.<sup>37</sup> The city's bond rating would have gone down in January 2015 if the city had not figured out how to resolve the issue beforehand.<sup>38</sup> The city solicited the court to help solve these problems, and the model worked in these additional settings.<sup>39</sup>

The key to triggering these negotiations is a pending case.<sup>40</sup> In such cases, the federal courts can provide critical intervention and make a lasting community contribution by affecting change. The federal court has the authority to force parties to the litigation to show up and order the parties to pay for mediation.<sup>41</sup> It is also well respected enough to get non-parties to show up and willingly talk about community problems.<sup>42</sup> Often, courts invite people they do not have jurisdiction over, invitees agree to participate, and a stakeholder group, with broad and converging interests, forms.<sup>43</sup> While state trial courts can implement impactful programs, such as MACRO,

to address escalating issues within a community, the distinction between the state and federal models is a pending case.

The federal model also differs from the model used by the state court in Maryland in other ways. While less voluntary, it provides more protection. The court removes both pressure from city officials and politicization of the issue, and provides cover regarding contentious issues.<sup>44</sup> Federal judges are not in elected positions, so they can make unpopular decisions without the fear of repercussions, and lifetime appointments allow them to see those decisions through.<sup>45</sup> Whereas, a state court model applied in the same Cincinnati area covers just the Hamilton County Common Pleas Court, and those judges occupy elected positions.<sup>46</sup> This may provide a different focus and concern over unfavorable decisions.<sup>47</sup>

### **Critiques of Court Intervention in Community Conflict**

Some may be hesitant to turn to courts to assist in resolving community conflicts for a variety of reasons. There may be a fear of introducing perceived bias on the part of the judiciary; potential confusion over the role of the court as an independent branch of government; or that judicial involvement may create political overtones, thereby politicizing the court through the intervention process.<sup>48</sup> Further risks include communication of information not otherwise available to judges, lack of impartiality from a vested interest in the success of the intervention, undermining public confidence in the judiciary, and distraction from its core functions.<sup>49</sup>

Others have suggested that the judiciary's climate and culture may pose difficulties for effective intervention.<sup>50</sup> While a well-respected institution, a court is also a "highly structured, traditional, [and] rule-bound institution"<sup>51</sup> and may lack the flexibility necessary for resolving community conflicts. By adhering to the narrow and regimented focus typically associated with

litigation, critics caution that courts may fail to “accomplish the issue-broadening” or reconciliation goals sought by parties.<sup>52</sup>

Intervenors have also noted the importance of early intervention,<sup>53</sup> and courts may not be able to respond quickly enough following unrest. Consequently, judicial intervention may not be the best institutional fit for a community. Each governmental branch has a role in the intervention process, and it is important to determine where each is most effective.

Following the shooting death of Trayvon Martin in 2012, thousands of protestors flocked to Sanford, Florida. By housing the intervention function in its executive branch, officials in Sanford were able to intervene quickly when civil unrest ensued.<sup>54</sup> As a result, no riots, violence, or arrests occurred during the demonstrations.<sup>55</sup> In contrast, the federal court in Cincinnati did not intervene until after days of demonstrations, rioting, and scores of arrests following the shooting of another African-American youth.

### **Responding to the Critiques**

While the critiques raise valid issues, they miss the mark, as the courts in both Cincinnati and Maryland avoided the potential harm they warn against.

Though timing was key in Sanford, the executive branch isn't the only branch that can intervene quickly during conflict. If structured properly, an intervention agency housed within the judicial branch can also respond quickly to rising community tensions. This is where a state court model, such as MACRO, an agency of Maryland's highest court, is most effective. By contracting with intervenors and keeping one on retainer who can enter a powder keg situation immediately, courts can intervene quickly and then structure the contract to work alongside public officials to shape community intervention, just as MACRO did in Frostburg. Other courts can emulate this model by creating a similar agency.

The federal court model in Cincinnati was effective in dispelling other concerns. By involving parties other than those subject to the litigation, Judge Dlott was able to accomplish the issue broadening critics have warned courts are incapable of achieving. The issues were no longer solely about resolving the issues in litigation pending before the court, but in improving perceptions of justice, communication between leaders and residents, and Cincinnati as a whole.

Furthermore, both the Maryland and Cincinnati court structures immunize the judges themselves from receiving information they would otherwise not be privy to and avoids any politicization of the courts. In Judge Dlott's example, by making the referral to DOJ, she was careful to orchestrate the process to ensure she didn't receive information that wasn't otherwise available to her. The same is true for different reasons in Maryland, as the state court model doesn't involve cases pending before the Maryland Court of Appeals or its lower courts. With both models, proper structuring creates barriers to information, and any dangers pointed out by critics, did not occur.

### **A Role for Courts and for Attorneys in Suggesting Court Involvement?**

Within each community, there are promising opportunities for institutional intervenors to assist in bridging divided communities and creating forums to better communicate with one another. By planning ahead and engaging in a collaborative process, city leaders can create a shared community narrative and sustainable mediation processes. These processes can stem from influential institutions, such as the courts, increase public perception of fairness and justice, provide transparency, access to decision making, and improve the way people react to one another. No region is immune to divisiveness and the unrelenting spread of civil unrest, making imperative the need to design processes pivotal to gaining trust in communities. By keeping an ear to the ground, attorney mediators can suggest that courts intervene at the right moments and for the right

conflicts. Attorneys in both Maryland and Cincinnati approached the judges that later spearheaded their respective judicial intervention initiatives. Courts can provide critical community intervention and should be considered a valuable resource to reestablish connections among people, restore trust and understanding in each other, and rebuild fractured communities.

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\* Associate, Squire Patton Boggs (US) LLP; J.D., The Ohio State University Moritz College of Law.

<sup>1</sup> Nancy H. Rogers, *When Conflicts Polarize Communities: Designing Localized Offices that Intervene Collaboratively*, 30 OHIO ST. J. ON DISP. RES. 173, 178 (2015).

<sup>2</sup> *Id.* at 207.

<sup>3</sup> *Id.*

<sup>4</sup> Jay Rothman, *Identity and Conflict: Collaboratively Addressing Police-Community Conflict in Cincinnati, Ohio*, 22 OHIO ST. J. ON DISP. RESOL. 105, 110 (2006).

<sup>5</sup> *Id.*

<sup>6</sup> *See id.* at 111.

<sup>7</sup> *Id.*

<sup>8</sup> Rogers, *supra* note 1, at 216; Jay Rothman, *supra* note 6, at 110, 217-28.

<sup>9</sup> Jay Rothman, *supra* note 4, at 114.

<sup>10</sup> *Id.*

<sup>11</sup> Telephone Interview with Judge Susan Dlott, presiding judge over the Cincinnati Collaborative Agreement, (Oct. 5, 2016).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Rothman, *supra* note 4 at 105. “The Collaborative Agreement was the result of nine months of participatory problem assessment and goal setting by almost 3,500 citizens of Cincinnati, followed by three months of intense negotiations among representatives of the city, the police, the BUF, and the ACLU.”

<sup>15</sup> Dlott, *supra* note 11.

<sup>16</sup> Collaborative Agreement at 3, In re Cincinnati Policing, (2001) (No. C-1-99-317), <http://www.cincinnati-oh.gov/police/linkservid/27A205F1-69E9-4446-BC18BD146CB73DF2/showMeta/0/> (last visited Oct. 26, 2016).

<sup>17</sup> Dlott, *supra* note 11.

<sup>18</sup> *Id.*

<sup>19</sup> Collaborative Agreement, *supra* note 16, at 24-25.

<sup>20</sup> Dlott, *supra* note 11.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* Author’s note: social services can also serve as potential community radars.

<sup>26</sup> *Id.*

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* See also Rogers, *supra* note 1, at 221.

<sup>42</sup> Dlott, *supra* note 11.

<sup>43</sup> See e.g., Joseph F. Sullivan, *Trenton's Efforts at Mediation Pay Off*, N.Y. TIMES, Feb. 17, 1994, at <http://www.nytimes.com/1994/02/17/nyregion/trenton-s-efforts-at-mediation-pay-off.html> (discussing the federal court's judicial intervention into a dispute concerning the closing of low income housing in New Jersey). See also SYMPOSIUM ON LITIGATION MANAGEMENT: Toward a Functional Approach for Managing Complex Litigation, 53 U. CHI. L. REV. 440, 443 (1986) (discussing a federal case involving Native American fishing rights, civil unrest, and stakeholder analysis).

<sup>44</sup> Dlott, *supra* note 67.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 424–31 (1982); Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. CHI. L. REV. 494, 536–39 (1986); Judith Resnik, *Managerial Judges, Jeremy Bentham and the Privatization of Adjudication*, 49 SUP. CT. L. REV. 2D 205, 211–12 (2010); Judith Resnik, *Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication*, 10 OHIO ST. J. ON DISP. RESOL. 211, 260–62 (1995).

<sup>49</sup> Rogers, *supra* note 1, at 225.

<sup>50</sup> See Robert Rack, *A Letter to My Successor*, 26 OHIO ST. J. ON DISP. RESOL. 429 (2011).

<sup>51</sup> *Id.* at 431.

<sup>52</sup> Rogers, *supra* note 1, at 211; see also Rack, *supra* note 50.

<sup>53</sup> Rogers, *supra* note 1, at 189; see also SUSAN L. CARPENTER & W.J.D. KENNEDY, *MANAGING PUBLIC DISPUTES: A PRACTICAL GUIDE FOR GOVERNMENT, BUSINESS, AND CITIZENS' GROUPS* 11 (1988); James H. Laue, et al., *Getting to the Table in Policy Conflicts*, 20 CONFLICT RESOLUTION Q. [PREVIOUSLY MEDIATION Q.] 6 (1988); Richard A. Salem, *Community Mediation Through Outside Intervention*, 8 PEACE & CHANGE 91 (1982); John S. Murray, *Third-Party Intervention: Successful Entry for the Uninvited*, 48 ALBANY L. REV. 572 (1984).

<sup>54</sup> Rogers, *supra* note 1, at 184, 190.

<sup>55</sup> *Id.*



**The Washington Post**

Post Nation

# Cleveland agrees to pay \$6 million to settle Tamir Rice lawsuit, won't admit any wrongdoing

By Mark Berman and Wesley Lowery April 25, 2016

The city of Cleveland will pay \$6 million to settle a lawsuit filed by the relatives of Tamir Rice, a 12-year-old boy shot and killed by a police officer in 2014, according to a settlement announced Monday.

Under the terms of the agreement, which still has to be approved by a probate court, the city will pay \$3 million this year and \$3 million next year to settle the lawsuit. The bulk of the money will be paid to Rice's estate.

The settlement does not include any admission of wrongdoing, U.S. District Judge Dan Polster wrote in a one-page document filed Monday.

"Although historic in financial terms, no amount of money can adequately compensate for the loss of a life," attorneys for Rice's family said in a statement. "Tamir was 12 years old when he was shot and killed by police — a young boy with his entire life ahead of him, full of potential and promise. In a situation such as this, there is no such thing as closure or justice. Nothing will bring Tamir back."

This lawsuit was filed not long after a Cleveland police officer fatally shot Tamir, who was playing with a toy gun in a park when authorities were called to the scene. Tamir's death was one of several high-profile incidents that propelled an ongoing national discussion over how police officers use deadly force, particularly against black men and boys.

While the call about a man with a gun specified that the person may have been a child with a toy weapon, the officers — Timothy Loehmann and Frank Garmback — were not told that when they responded.

Both officers, along with the city of Cleveland, were named as defendants in the federal lawsuit filed less than two weeks after Tamir was killed. On Monday, the officers said they still believe they acted legally, even as they said they saw the benefits of settling the case.

“The officers value the lives of all persons, including their own, and certainly wish that fate had not brought them into the situation that forced them to act in the manner in which they did; which they maintain was ‘legally reasonable’ under all of the circumstances,” an attorney for both officers said in a statement. “That having been said, the officers recognize the value of early legal resolution to allow some healing to begin.”

In December, a grand jury declined to bring criminal charges against Loehmann. Cuyahoga County Prosecutor Timothy J. McGinty, who lost a reelection bid last month, said that while Rice’s death was a tragedy, “it was not, by the law that binds us, a crime.” The jurors decided that the shooting was justified and never voted on the question of criminal charges. Officers are rarely charged for fatally shooting people while on duty, and convictions in such cases are even more rare.

Polster agreed to oversee settlement talks between attorneys for Rice’s family and the city’s lawyers last month. In his order filed Monday, Polster wrote that the settlement was reached after an all-day discussion on April 1 followed by numerous telephone calls.

“While we have settled the legal side of this and the court proceedings side of this for \$6 million dollars, there is no price that you can put on the life, the loss of a 12-year-old child,” Cleveland Mayor Frank G. Jackson said at a news conference Monday.

The seven-figure settlement in Cleveland is the latest in a series of payouts for the families of those killed by police officers in incidents that sparked protests. New York City agreed to pay \$5.9 million to the family of Eric Garner, whose death after being put in a chokehold by a police officer was captured on video by a bystander.

The city of Baltimore agreed to pay \$6.4 million to the family of Freddie Gray, whose death in police custody a year ago led to charges against six officers. And in North Charleston, S.C., the city paid \$6.5 million to the family of Walter Scott, whose shooting — captured on camera — led to murder charges against the officer involved.

### **Further reading:**

People shot and killed by police so far this year

Six police officers in Cleveland fired for “137 shots” car chase

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# Cleveland settles federal lawsuit with families of police chase victims Timothy Russell, Malissa Williams

15

Gallery: Cleveland Police chase: Looking back at the deadly shooting of November 2012

By [John Caniglia, The Plain Dealer](#)

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on July 16, 2014 at 2:00 PM, updated July 17, 2014 at 7:49 AM

CLEVELAND, Ohio – Cleveland has settled a federal lawsuit for an undisclosed amount of money with **the families of Timothy Russell and Malissa Williams**, who were killed after a 2012 car chase in which police officers fired 137 shots at Russell's car, a judge said Wednesday.

U.S. District Judge Dan Aaron Polster said in documents that the settlement is dependent upon a judge's approval in Cuyahoga County Probate Court, where the estates were set up to oversee any awards from the lawsuit. A probate judge would decide whether the settlement is fair and just. Nothing had been filed on it Wednesday.

"The court held a settlement conference with clients and counsel on July 14," Polster wrote. "As a result of negotiations, the above captioned case has settled, subject to Probate Court approval."

In an interview Wednesday morning, Polster would not discuss settlement figures, saying only "I'm not going to say anything beyond the order."

The agreement comes just eight months after the administrators for the estates of Russell and Williams filed suit against the city, its top administrators, police brass and officers on Thanksgiving.

The suit claims officers used excessive force, supervisors failed to rein in officers during the chase and top administrators provided inadequate supervision and training to officers regarding the department's policies and practices. The U.S. Justice Department is examining the use of force by officers and the city's policies.

The lawsuit stemmed from Nov. 29, 2012, when 60-some police cruisers chased Russell and Williams for more than 20 miles to the parking lot of Heritage Middle School in East Cleveland and the gunfire that followed. The chase began near the Justice Center, where officers believed someone in Russell's car fired at them.

The suit says the pair did not have a gun with them during any part of the pursuit. Authorities said they believe the noise stemmed from a backfire from Russell's car.

Unlike countless other major lawsuits filed in federal court, the legal fight involving the families' estates and Cleveland appears unique: There were no depositions taken, and neither side submitted any major filings.

"Each case is different, and each case has its own time table," Polster told The Plain Dealer.

Terry Gilbert, one of the attorneys representing the estate of Russell, and David Malik, one of the lawyers representing the estate of Williams, said: "The lawyers for both estates, as well lawyers for the City and officers, are unable to disclose the terms at this point because any settlement must be approved by the probate court. That process will take some time.

"Nothing can ever provide a complete sense of justice because what occurred on Nov. 29, 2012, cannot be reversed," the attorneys said. "The families will have closure, and that is very important to them, but this is just the beginning of the road to real reform in Cleveland.

"We look forward to the results of the U.S. Department of Justice investigation, and we stand ready to work with the community to make sure that excessive force by Cleveland Police comes to an end."

A city spokesman said Cleveland officials would not discuss the settlement.

The settlement comes less than two months after **a Cuyahoga County grand jury indicted Patrolman Michael Brelo with two counts of voluntary manslaughter**. He fired 49 shots into the car, with the last barrage unloaded from the hood of Russell's car, according to records filed by prosecutors.

The grand jury panel also accused five supervisors of dereliction of duty for their roles in the chase: sergeants Randolph Dailey, Patricia Coleman, Jason Edens, Michael Donegan and Lt. Paul Wilson.

The officers have pleaded not guilty. A trial date has not been set.

Defense attorney Patrick D'Angelo represents Brelo. He has maintained that the officer and the others involved did nothing wrong.

"(The settlement) is further proof that the plaintiffs' attorneys and the families have made this case all about money," said

D'Angelo, who also represents the Cleveland Police Patrolmen's Association, the police union. "They have bootstrapped themselves on the investigation and have used it for their case.

"I wonder how many hours they spent working on this case compared to how much they will make. And now that this settlement is over, they'll bring their energy to the criminal case as retribution."

He also said that some family members estranged from Russell and Williams but are now seeking money from the settlement.

When the lawsuit was filed in November, D'Angelo said that Brelo and others involved in the case will be vindicated when the evidence is presented. He said then that Russell attempted to drive over at least three officers, using his car as a deadly weapon. He also said that based on radio broadcasts and the way Russell and Williams acted in the car, the officers acted within the law.

But late Wednesday, Cuyahoga County Prosecutor Timothy McGinty released a statement that scoffed at D'Angelo's words.

"Obviously, despite the union's latest malevolent statement, the police were out of control that night, plain and simple," McGinty said. "There was no leadership. In addition to killing a totally innocent passenger and a petty criminal who just could have been arrested later, the police very easily could have killed other motorists or pedestrians during the chase or one another as they shot up their own police cruisers at the school.

"Let's all work to see that this fiasco is never repeated. If we can do that, the city will save both lives and money and start to build public confidence."

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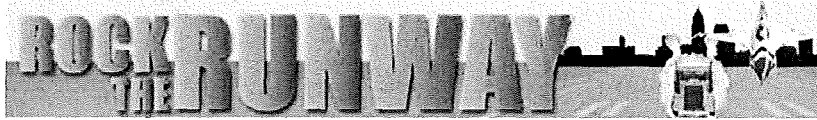
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METRO NEWS

## Federal judge overturns Cleveland's restrictions on RNC protests

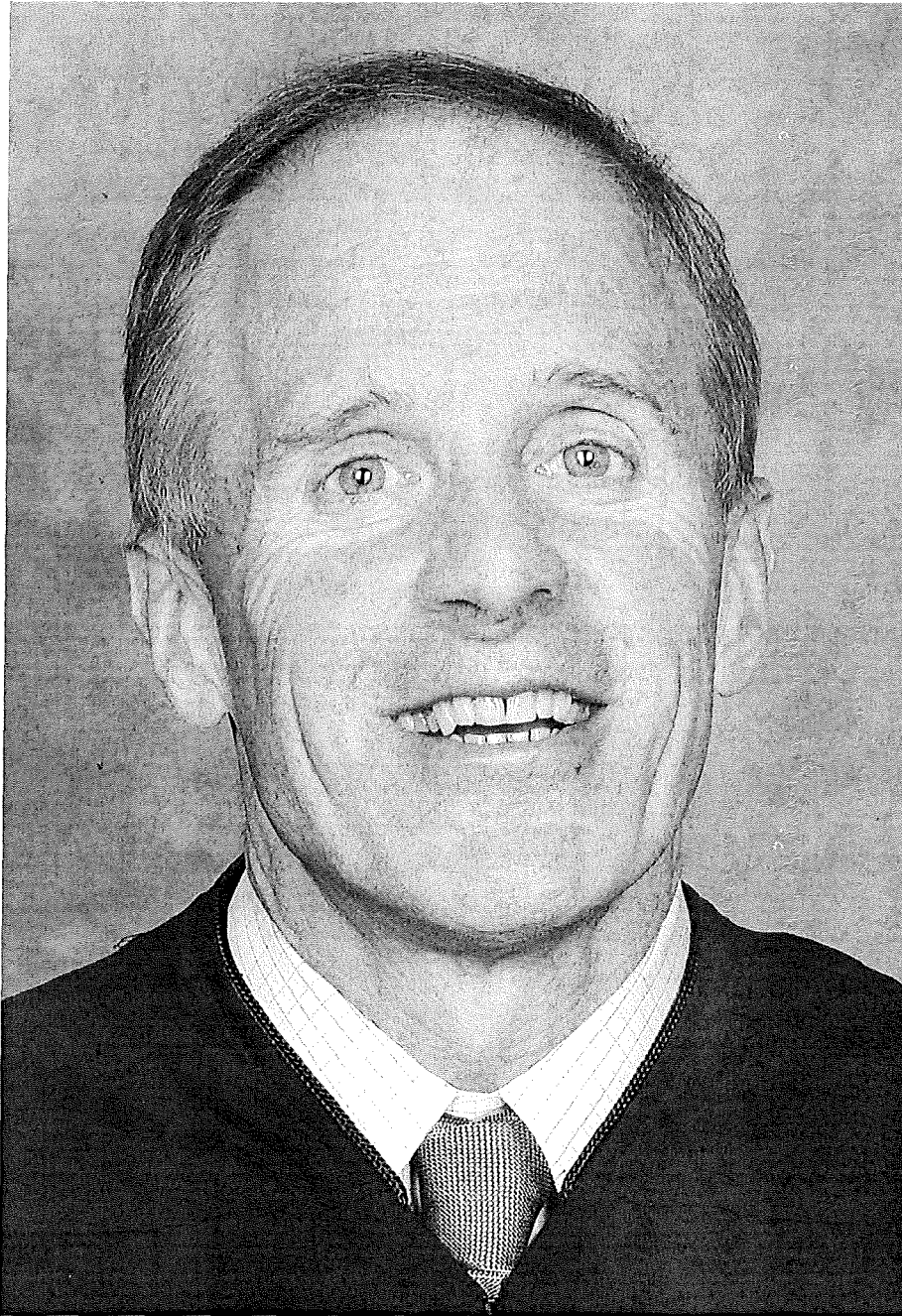
462 Updated on June 24, 2016 at 1:55 PM  
Posted on June 23, 2016 at 11:45 AM



This photo was taken from along Cleveland's official protest route for the Republican National Convention, at the corner of Carnegie and Ontario avenues, which is about one-third of a mile from the arena and represents the route's closest point to the arena. A federal judge on Thursday overturned restrictions put in place to confine demonstrations during the RNC. (Mark Naymik, cleveland.com)

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By [Eric Heisig, cleveland.com](#)



U.S. District Judge James Gwin (Clerk of Courts)

CLEVELAND, Ohio -- A federal judge on Thursday scrapped the city of Cleveland's plans for a heightened-security zone that would have encompassed most of downtown during the Republican National Convention, saying that the restrictions are burdensome to people who want to express their free-speech rights.

U.S. District Judge James Gwin's ruling comes 25 days before Republican delegates and leaders will descend upon Cleveland and forces the city to redraw the boundaries to the so-called "event zone," which would have encompassed a 3.5-square-mile area at the heart of the city.

The city indicated it would appeal the judge's order, but the executive director of the American Civil Liberties Union of Ohio, which brought the lawsuit, said the organization's attorneys are now negotiating at the judge's behest to come up with a compromise because of the short timeframe.

Gwin made his ruling orally, following a hearing. He said a written opinion would follow.

In his comments, the judge attacked several aspects of the event zone and the accompanying restrictions, which the city announced late last month:

\* He said the size of the event zone, is "unduly large." It was drawn to go from from West 25th Street to Innerbelt, and from the lake south to the corridor between Orange Avenue and East 22nd Street. It all surrounded the Quicken Loans Arena, where the convention will be held and will be part of an area with even more security.

\* He said the parade route is unconstitutionally insufficient. It was to begin at the west end of the Lorain-Carnegie bridge, heads east toward downtown before turning right on Ontario Street, near Progressive Field, and under Interstate 90 before ending at East 9th Street.

\* The judge said the times at which people can hold parades, which is only for a few hours each day of the convention and not during the hours in which the delegates are expected to be downtown, are problematic.

"And I don't mean to suggest the city can't control the time and the parade routes, but I think the restriction to this Lorain-Carnegie Bridge, at times when delegates are almost invariably not going to be present, is an insufficient opportunity for First Amendment purposes.," the judge said.



\* Gwin said there are "constitutional problems with the use of the parks." Currently, protesters are limited to applying for permits to use an official "speaker's platform at Public Square," or to set up installations or "public art at two downtown parks. The city has said the RNC has reserved the other nearby parks for convention-related events.

ACLU of Ohio executive director Christine Link praised the judge's ruling. She said "the clock is ticking" before the convention -- which will take place July 18-21 -- and hopes that the city and the ACLU can come to an agreement on a new event zone. Gwin had suggested the city and ACLU negotiate to avoid further litigation.

Negotiations are being handled by U.S. District Judge Dan Polster, who is known for his ability to broker settlements.

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"A negotiated settlement is way better," Link said, adding that she did not think the case would be resolved on Thursday.

Cleveland spokesman Dan Ball said that city officials are evaluating their options.

It was clear that Gwin, who was appointed to the bench by President Bill Clinton in 1997, had Wednesday's parade to celebrate the Cleveland Cavaliers' Game 7 win in the NBA finals on his mind.

Gwin asked city attorney Stewart Hastings how many people were downtown for the parade. Hastings smiled and said "1.3 million, your honor," though Cuyahoga County estimated that a million people attended.

When asked how many people would come to Cleveland for the RNC, he estimated between 50,000 and 100,000 people.

Hastings differentiated the groups, though, by saying that "a celebration of happy fans is very different than the people I expect to come to Cleveland for the Republican National Convention."

The city maintained its previous assertion that the event zone it created was to ensure security for people coming downtown. Hastings said that the convention is an "ideal target for international and domestic terrorists" and that despite that, the restrictions it had sought to impose were among the least stringent of any recent political convention.

The judge seemed skeptical on how allowing a march downtown or allowing demonstrators to use several city parks poses a security concern.

"If you've got a park that's a distance from The Q, why would you want to restrict that?" the judge asked.

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Gwin also questioned the inability for those who want to hold parades on other streets, such as Carnegie Avenue, and how delegates would be able to see the protesters on the bridge.

Hastings argued that the city needs routes to ensure those who need medical help can get to University Hospitals.

When pressed on why the road was shut down for the Cavs' parade, though, Hastings said that there were other side roads that were used during Wednesday's festivities.

The ACLU, in its lawsuit filed last week, represented Citizens for Trump, Organize Ohio and the Northeast Ohio Coalition for the Homeless, which are planning to demonstrate and march at the convention.

The city on Monday denied a request to march along a route leading toward downtown from the city's East Side. The group says the route will symbolically highlight the 50th anniversary of the race-related riots in Cleveland's Hough neighborhood. It also denied a request from Citizens for Trump to hold a rally at a city park.

ACLU of Ohio legal director Freda Levenson said at the hearing that it

was administratively appealing the city's denials.

The ACLU on Thursday also sued the city of Philadelphia over protester restrictions.

Cleveland.com reporter Andrew J. Tobias contributed to this report.



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# ACLU hails deal to shrink RNC security zone as win for protestors



By Gregory Krieg, CNN

Updated 3:30 PM ET, Wed June 29, 2016



Protesters take to streets after Trump rally 02:33

## STORY HIGHLIGHTS

RNC "event zone" cut in half to 1.7 square miles

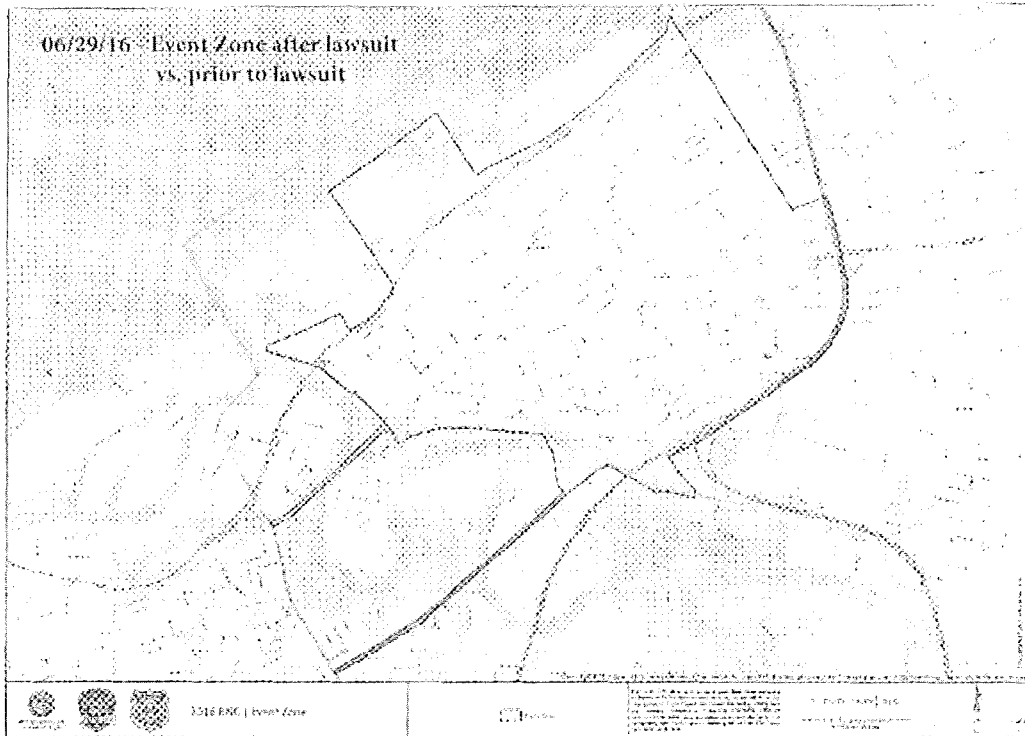
New steps to prevent confrontations between pro- and anti-Trump groups

**(CNN)** — The city of Cleveland and the American Civil Liberties Union have agreed to a deal that will halve the size of a heightened security zone outside July's Republican convention.

At 3.5 square miles, the original planned "event zone" would have covered most of the city's downtown, preventing large-scale demonstrations anywhere near the convention site. The new agreement shrinks the perimeter to 1.7 square miles, creating new spaces for the dozens of groups planning protests next month

both in favor and against presumptive GOP nominee Donald Trump and the party.

"This agreement prevents the 2016 RNC from being defined by an unnecessary conflict between freedom and security," Christine Link, the ACLU of Ohio's executive director, said Wednesday in a statement. "The new rules ensures that people have meaningful opportunities to express themselves on some of our most important national issues."



ACLU HANDOUT

**The new "event zone" has been reduced to roughly half its initial size.**

The revised regulations also extend the city's designated parade route and provide buffer times between permitted marches in an effort to head off potential confrontations between pro- and anti-Trump groups, an ACLU spokesman told CNN.

As a federal "National Special Security Event," the convention hosts receive \$50 million in funds from Congress to equip law enforcement and manage security in and around the convention hub, which will be held in the Quicken Loans Arena.

Citizens for Trump, one of the groups represented in the ACLU litigation, will now be able to hold a rally in Settler's Landing Park, less than a mile from the venue.

Discussions to rework the rejected plans began last Thursday, when U.S. District Court Judge James Gwin, an appointee of former President Bill Clinton, scrapped the city's initial strategy, calling the security zone "unduly large" and citing "constitutional problems" with its restrictions on the use of parks. Judge Dan Polster, who helped mediate the initial court-ordered negotiations, will remain in place to see out their provisions.

The convention's Committee on Arrangements had sought to join the city in defending the previously established guidelines, citing terror concerns and the alleged threat of angry protestors seeking to assault delegates and other participants. But the court denied their request.

Cleveland Mayor Frank Jackson's office did not immediately respond to a request for comment. In a press release, it confirmed the revised the borders, boundaries and by-laws.