

# Free research paper on challenging section 'b' of the baltimore airport regulatio...

[Law](#), [Constitution](#)



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## **Introduction**

The US Constitution guarantees many of the rights of the individual citizens. One of the rights guaranteed is the right to peaceably assemble. The Bill of Rights states in part that “ Congress shall make no law respecting an establishment of religion, or the free exercise thereof [] or the right of the people to peaceably assemble” (First Amendment [emphasis added]). The 14th Amendment, on the other hand, ensures that states enforce this guarantee and all other civil rights guaranteed under the Constitution. The core issue in the present study is the right of the fans of Big Bad Bruce to gather within the vicinity of the Baltimore International Airport to welcome home the rock star and express support for his political views. However, the Baltimore International Airport is a regulated zone for which the Department

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of Transportation of Maryland has imposed several provisions, specifically under s ' B', that stand in the way for Big Bad Bruce's fans planned gathering. This research paper takes into consideration some of these issues contained in the relevant regulations that hampers this planned activity.

## **List of Possible Issues**

Several issues contained in section ' B' of the regulations are open to potential challenge. These issues are discussed in the following paragraphs.

Issue: Whether the limitation on the number of persons, i. e. 30 persons at the most, violates the First Amendment on the right to peaceably assemble, and whether the stated purpose of the limitation " to avoid congestion and to promote the smooth operation of the airport" is reasonable and , can therefore, validly justify the restriction.

Issue: Whether the Fourth Amendment on the right against search and seizure is violated by section ' B's' provision that subjects persons and their personal items to search and seizure inside terminals or within 500 yards of any airport buildings.

Issue: Whether section ' B's' provision pertaining to the automatic waiver of persons of their constitutional rights, including the right to access courts, upon giving consent to and acceptance of license of passage is constitutional.

## **Limitation on the Number of Persons that can Assemble**

As earlier stated, the First Amendment guarantees the right of the people to peaceably assemble. The 14th Amendment ensures that states abide by this as well. This right, however, is not absolute and the first restriction is implied

in the adjective ' peaceably.' Thus, the government may impose restrictions on any citizens' assembly to ensure that they come within the limits of the word ' peaceable.' The usual restrictions are centered on time, manner and place of the assembly. In *Ward v Rock Against Racism*, 491 US 781 (1969), New York City issued a guideline to the use of the sound system in the bandshell area of the Central Park after the city had received numerous complaints from other citizens who found the yearly rock music festival sponsored by the Rock Against Racism noisy and disturbing. The Court held that the city's guideline has met all its time, place and manner restriction requirements, which must be " narrowly tailored to serve the government's legitimate, content-neutral interests, but that it need not be the least restrictive or least intrusive means of doing so" (*Ward v RAR*, 491 US 781 [1969]).

Although courts have allowed restrictions to the right to peaceably assemble, it also imposed several the requirements, such as clarity of the regulation limiting the right. In *Gallo v. Acuna*, 14 Cal 4th 1090 (1997), the California Supreme Court affirmed a lower court's decision that approved a preliminary injunction filed by the city of San Jose against gang members enjoining them to congregate in specific places of the city, such as on lawns, sidewalks and in front of apartments. The Court held that the obligation of the city to maintain peace and order must be reconciled with other rights, and such reconciliation must begin with the notion that the welfare and interests of society is not less than those of individual citizens. However, in *City of Chicago v. Morales*, 527 US 41 (1999), the US Supreme Court held as unconstitutional a Chicago ordinance that prohibited gang members from

loitering in public places. According to the Court, the law is too broad and this broadness gives the police too much discretion to determine as to what constituted loitering and who is conducting loitering.

Comparatively, restrictions of rights in airports have better chances of being upheld because airports operated by public authority are considered a nonpublic forum. In *International Society for Krishna Consciousness, Inc. v. Lee*, 505 US 672 (1992), the Court held that a regulation prohibiting the solicitation of money within airport terminals is valid because airports are not traditional public forum. In traditional public forums, authorities can only validly restrict expressive activity if the restriction is “ narrowly drawn to achieve a compelling state interest.” However, in any other government-owned property, such restrictions need to be only reasonable. Moreover, the ban on solicitation is reasonable, according to the Court, because to the Court, because of its disruptive effects on passengers and patrons.

In the earlier case of *United States v Grace*, 461 US 171 (1983), the Court, in passing, made a distinction between traditional public forums and non-traditional public forums. It cited traditional public forums as including streets, sidewalks, and parks. Other than traditional public forums, other government properties opened to the public are not necessarily public forums by reason of their being accessible to the public. In such places, the government may even ban the entry of the public, except those with legitimate business in their premises. Thus, in this case, the Court upheld the ban by the government of expressive activity in the Supreme Court building and grounds. In *Greer v Spock*, 424 U. S. 828 (1976), the Court held that the military installation served the purpose of training soldiers and is not

traditionally a forum for expressive activities unlike streets and parks, although it allows the public to access certain areas. The restriction is, thus, not unconstitutional on its face.

Despite an area being a non-traditional public forum, however, any restriction to its access must be reasonable to the extent that it must not violate the overbreadth doctrine, which provides that the prohibition must not be too broad or too sweeping that it does not distinguish between reasonable activities and unreasonable ones. In *Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc*, 482 US 569 (1987), the Court held that even non-traditional public forums must only make restrictions that are reasonable. In this case, the Court held that a prohibition that applies to all First Amendment activities is overbroad because it does not distinguish between activities that are disruptive to the smooth operation of the airport and those that are non-disruptive.

Applying the gist of all these cases to the case at bar, it would seem that Baltimore authorities are justified in refusing to allow the fans of Big Bruce to gather in the airport to meet him and support his political views. First, the right to assembly is not an absolute one as held in the several cases mentioned earlier. For this reason, authorities can regulate it as long as it abides by the time, manner and place requirements set forth by the SC. The Baltimore authorities can thus impose limits on the right of the fans to gather and meet Bruce. Second, an airport is not a traditional forum for expressive activities and therefore the limitation allowed to authorities is greater.

Nonetheless, such a restriction must be reasonable. The limitation of the number of people to 30 to constitute a gathering in the airport is reasonable

because to allow a greater number can potentially impede the movement of people and eventually, the smooth flow of flights.

## **Search and Seizure**

The US Bill of Rights provides that “ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized” (4th Amendment). In this provision it is clear that the government is prohibited from conducting searches and seizures that are unreasonable. Any search and seizure that must be conducted must also be accompanied by a warrant, which can be obtained only if the conditions set forth therein are met: existence of probable cause, supported by an oath or affirmation, and drafted in a specific manner by indicating the particular place or places to be searched and the persons and/or things that are going to be seized.

The courts have, however, cited exceptions to the general rule on search and seizure. Some of these exceptions are: “ consensual searches, stop and frisk searches, airport and courthouse searches, hot pursuit searches, border searches, searches incident to arrest, and random drug testing of high school athletes” (cited Clark 2006, p. 715). There are several cases decided by US courts in the area of search and seizure in airports. In *United States v. Moreno*, 475 F. 2d 44 (5th Cir. 1973), the Court held that a search and detention of a passenger and the seizure of heroin from him conducted by an airport security officer was reasonable. In upholding the actions of the

security officer, the Court considered whether the facts available to the security officer at the time of search and seizure could justify a reasonably cautious person's actions as appropriate. In *United States v. Skipwith*, 482 F. 2d 1272, 1277 (5th Cir. 1973), the Court held that in the pre-boarding area, which is a very critical area, the requirement of reasonableness does not require a security officer to confine his search on persons exhibiting suspicious profiles, because it cannot be assumed that persons intending to create havoc in airplanes are identifiable. In the boarding gate, a search should not be stricter than those employed in border-crossing situations. The reasonableness of the search must be based on the balancing of harm and need. When the risk involved could mean the jeopardy of hundreds of people and considerable property, danger justifies reasonableness if search is conducted in good faith, and the passenger is notified beforehand that he might be subjected to search.

Applying the aforementioned cases to the present case, it can be said that the Baltimore authorities has the right to subject persons within the airport to search and seizure without a warrant. This is because airport search is an exception to the rule. Airport authorities are given a broad leeway in determining whether the possible harm outweighs the interests of the 4th Amendment because of the number of lives at stake when drugs or explosives are inadvertently let into airport facilities. All persons passing the boarding area or exiting the arrival terminals can be subjected to search and if contrabands are found on them, can be seized. Big Bruce cannot resist any search that airport personnel may subject him to as long as such search is conducted with good intention.



## **Automatic Waiver of Constitutional Rights**

Constitutional rights can be validly waived only if the waiver is voluntary and is, thus, the result of a free and intentional choice. The waiver must not be attended by any force that vitiates the free will, such as coercion, intimidation or deception (Dimitrakopoulos 2007, p. 84). In *Florida v Bostick*, 501 US 429 (1991), the Court held that a search may be conducted even in confined spaces such as buses if the person subjected to the search has given his consent, but only if the police does not convey or imply a meaning that the person to be searched is required to give his consent. In short, the dictum suggested in the case is that a right may be waived through consent, but consent must not be vitiated by any compulsive element.

Similarly, several cases have upheld the right of recourse or access to courts. Both *Lewis v Casey*, 518 U. S. 343 (1996) and *Bounds v Smith* 430 U. S. 817 (1977) have highlighted the fact that the right is a constitutional right that must be upheld by the government. Just like any other constitutional rights, this right cannot be waived unless it is voluntarily made by the person without any attendant coercion and other factors that vitiate the will.

With these cases in mind, it can be said that s ' B's' provisions on automatic waiver of constitutional rights upon acceptance of license passage is unconstitutional. The rights guaranteed by the Constitution cannot be revoked by the government unless the individual voluntarily waives them, through consent. The consent must be freely given and not forced from any person through one-sided contracts. No law or regulation, such as s B, can be enacted to take away the rights guaranteed by the Constitution because this is prohibited by the Constitution itself. Thus, s B cannot force the passengers

and patron to give up their rights, such as going to courts or subjecting themselves to arbitration - since arbitration presupposes mutual consent.

### **Analysis of Implications: Current and Future**

Any decision on the subject matter of allowing the fans of Big Bruce to hold a gathering in the airport as well as other issues involve in this paper have relevance in the present because the restriction of many rights in the airport have been subject of many debates and complaints. A decision favorable to the fans would redefine the meaning of public forums and take the airport out of the non-traditional public forums. It would run counter to the dictum laid down in *Perry Education v Perry Educators' Association*, 460 U. S. 37 (1983), where the Court had divided public places into traditional public forums, designated public forums and non-traditional public forums. A contrary decision would cement and sustain the Perry dictum. A restriction of the power of airport security in matters of search and seizure may please some passengers and maybe facilitate travel even more, but could mean more risk to many people.

Future implications of a favorable decision is to strengthen the right to assembly and other constitutional rights and even make them closer to being absolute than even risk is not given major consideration. However, since air travel may be less safe, people would probably opt to travel less and terrorists and drug traffickers may turn more and more to air travel as a means of achieving their goals

## **Personal Opinion**

The airport has historically been a place that does not provide a venue for large assembly because of the potential of such a gathering to impede the facility of air travel. In the wake of the 9/11 terrorist attacks, the necessity of tight security at airports have become a matter of life or death. It is only right for the government to adopt measures to protect the public in general not only from the spread of drug use, but from the possibility of massive destruction that could arise from hijacked planes that could be use to attack society. The government has every right to close all the gaps to eliminate the possibility of another 9/11 happening all over again and for this reason subject all passengers and patrons within the airport to scrutiny. The planned assembly of about 300 people can still happen, but not in airport grounds, but in an area outside the airport where passengers and others persons with business in the airport are not impeded or slowed down by the presence of such a big assembly of persons.

## **Summary/Conclusion**

The rights guaranteed by the Constitution are sacred, but they are not absolute. They must give way to the general welfare and authorities have the grim task of balancing risk and need in conducting security measures in the airport. In the present case, the fans of Bruce must understand that their right to peaceably assemble can be subjected to restrictions much more so if they choose the airport as the venue for expressing their support for Bruce. Airports exist for the purpose of serving passengers who must travel to distant places. The right to assemble cannot take precedence over the

objective to facilitate the travel of these passengers. On the other hand, regulatory measures cannot get past the Constitution by passing a law that forces people to give up their rights on the justification that safety and order require it. Any waiver of these rights are valid only if so given up voluntarily by a person and in the absence of any elements that vitiate the will.

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