

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

In Re:

APPLICATION OF SBA TOWERS II, LLC ("SBA") FOR A
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE CONSTRUCTION,
MAINTENANCE AND OPERATION OF A
TELECOMMUNICATIONS FACILITY AT ONE OF TWO
ALTERNATE SITES AT RABBIT HILL ROAD IN
WARREN, CONNECTICUT

DOCKET: 378

May 19, 2009

**CROWW'S BRIEF IN RESPONSE TO CONNECTICUT SITING COUNCIL'S
REQUEST CONCERNING THE CONCERNED RESIDENTS OF WARREN AND
WASHINGTON DECLINATION TO IDENTIFY ALL OF ITS MEMBERS**

On May 12, 2009 Concerned Residents of Warren and Washington filed its
Responses to SBA's First Set of Interrogatories to CROWW. It declined, on
constitutional grounds, to answer SBA question Q1:

**Q1. Please identify any and all members of the CROWW, including full
name and address of each individual considered to be a member or pending
member of this organization.**

CROWW responded to Q1 as follows:

Respectfully declined, except for those members of CROWW who will
testify during the hearing, whose names will be submitted in the ordinary course
of the proceeding. Absent a substantial state interest, the names and addresses of
members of an association are protected from disclosure under the First
Amendment as absorbed in the Fourteenth Amendment to the United States
Constitution.

This was an entirely correct response to SBA's improper demand for a full
membership list, in plain violation of the right of citizens to associate freely with other
citizens to achieve common goals and objectives without outside prying or interference.

ARGUMENT

POINT I

THE FIRST AMENDMENT GUARANTEE OF FREEDOM OF ASSOCIATION PROTECTS MEMBERSHIP LISTS FROM DISCLOSURE IN THE ABSENCE OF A SUBSTANTIAL AND COMPELLING STATE INTEREST

The U. S. Supreme Court has spoken clearly and forcefully on the need to protect citizens' associations against the chilling effects of forced disclosure of the names and addresses of members:

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association. . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may, in many circumstances, be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

NAACP v State of Alabama, 357 U. S. 449, 462 (1958)

Any direction to CROWW by the Siting Council to turn over the information demanded by the SBA would be a direct violation of the Fourteenth Amendment:

[I]t is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States. De Jonge v. Oregon, 299 U. S. 353, 299 U. S. 364; NAACP v. Alabama, 357 U. S. 449, 357 U. S. 460. Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference. Grosjean v. American Press Co., 297 U. S. 233; Murdock v. Pennsylvania, 319 U. S. 105; American Communications Assn. v. Douds, 339 U. S. 382, 339 U. S. 402; NAACP v. Alabama, *supra*; Smith v. California, 361 U. S. 147;

Bates v. Little Rock, 361 U.S. 516, 523 (1960)

POINT II

SBA OFFERS NO JUSTIFICATION FOR IDENTIFICATION OF "ANY AND ALL" MEMBERS OF CROWW

CROWW's commitment to provide the names of all persons who will testify during the hearing fully satisfies the Siting Council's needs for witness identification. It will also satisfy all legitimate cross-examination needs of SBA.

Sec. 16-50j-25. provides:

(a) **Purpose of hearing.** The purpose of the hearing in a contested case shall be to provide to all parties an opportunity to present evidence and cross-examine all issues to be considered by the council and to provide intervenors an opportunity to present evidence and cross-examine such issues as the council permits. * * *

(c) At the discretion of the council, any evidence or testimony may be required to be pre-filed by a date specified by the council. All pre-filed evidence and testimony shall be received in evidence with the same force and effect as though it were stated orally by the witnesses, provided that each such witness shall be present at the hearing at which such prepared written testimony is offered, shall adopt such written testimony under oath, and shall be made available for cross-examination as directed by the council.

CONCLUSION

SBA's demand for the names and addresses of "any and all members" without any disclosed reason or purpose carries with it the suggestion of potential harassment and unethical contact with members of an organization represented by counsel. It is not permitted under the Constitution, and should not be allowed by this Council.

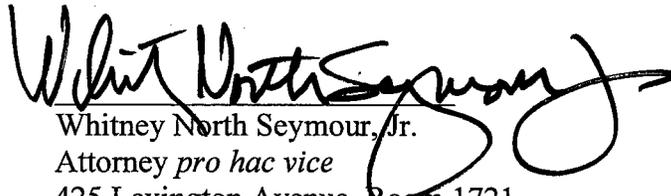
SBA has no more right to the full membership list of CROWW than CROWW itself has to a full list of SBA's stockholders.

SBA will receive full and timely notice of all persons CROWW will call as witnesses, and will have the same opportunity as any other party to conduct appropriate cross-examination.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and fifteen copies of the foregoing CROWW's Brief in Response to Connecticut Siting Council's Request Concerning the Concerned Residents of Warren and Washington Declination to Identify All of Its Members was served on the Connecticut Siting Council by first class mail and copy of same was sent postage prepaid to:

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Dated: May 19, 2009