

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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<p>WOMEN FOR AMERICA FIRST,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>BILL DE BLASIO, <i>in his official capacity as Mayor of New York City, New York,</i> and POLLY TROTTEBERG, <i>Commissioner of the New York City Department of Transportation,</i></p> <p><i>Defendants.</i></p>	<p>Civil Action No.: 20-5746</p> <p>COMPLAINT</p>
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Plaintiff Women for America First (“Plaintiff”), by and through its undersigned counsel, files this Complaint against defendants Bill de Blasio and Polly Trottenberg in their official capacities for violations of 42 U.S.C. § 1983, and in support thereof states as follows:

JURISDICTION & VENUE

1. Plaintiff Women for America First is a Virginia-based nonprofit located at 441 North Lee Street, Suite 300, Alexandria, Virginia. Women for America First routinely holds events in New York City, has thousands of supporters nationwide, many of whom reside in New York City—including Plaintiff’s Executive Director—and strives to promote the empowerment of the women.

2. Defendant Bill de Blasio is the Mayor of New York City. Defendant de Blasio’s offices are located at City Hall, New York, New York. Defendant de Blasio is being sued in his official capacity.

3. Defendant Polly Trottenberg is the Commissioner of the New York City Department of Transportation (“DOT”). Defendant Trottenberg’s offices are located at 80 Maiden Lane, 17th Floor, New York, New York. Defendant Trottenberg is being sued in her official capacity.

FACTS COMMON TO ALL CLAMS

4. The “Black Lives Matter” (“BLM”) movement was founded in 2013 in response to the acquittal of the acquittal of an Hispanic man, George Zimmerman. It is a decentralized movement in the United States advocating for civil disobedience in protest against incidents of police brutality and racially motivated violence against African-American people.

5. One organization known simply as Black Lives Matter is a decentralized network with about 16 chapters in the United States and Canada, while a larger Black Lives Matter movement exists consisting of various separate like-minded organizations and unorganized individuals uniting around the slogan that is the movement’s name. The broader movement and its

related organizations typically advocate against police violence towards black people, as well as for various other policy changes considered to be related to the rights of black people.

6. The movement became nationally recognized for street demonstrations following the 2014 deaths of two African Americans in violence related to police, culminating in protests – some non-violent, some decidedly violent – around the country.

7. BLM is a political movement. In the summer of 2015, BLM activists became involved in the 2016 United States presidential election, its participants essentially unanimously supporting the Democratic presidential candidate, Hillary Clinton.

8. On July 7, 2016, a BLM protest was held in Dallas, Texas, following which one participant, an African American named Micah Xavier Johnson, opened fire in an ambush, killing five Dallas police officers and wounding seven others and two civilians. The gunman was then killed by a robot-delivered bomb. Before he died, according to police, Johnson said that "he was upset about Black Lives Matter," and that "he wanted to kill white people, especially white officers." Most Black Lives Matter activists denounced the shootings. The next day, July 8, more than 100 people were arrested at Black Lives Matter protests across the United States.

9. The movement returned to national headlines and gained further international attention during the global George Floyd protests in 2020 following George Floyd's killing by a Minneapolis police officer. An estimated 15 million to 26 million people participated in the 2020 Black Lives Matter protests in the United States, making Black Lives Matter one of the largest movements in U.S. history. The movement has advocated to "defund the police" and "invest directly" into black communities and in "alternative emergency response models."

10. The BLM movement is for all practical purposes affiliated with the Democratic Party and notwithstanding expressions of frustration by BLM activists with the leadership of that party, BLM is unquestionably hostile to the Republican Party.

11. According to a June 17, 2020 article in *Time* magazine, BLM protests “could be a political bonanza for Democrats, political strategists say, galvanizing its most reliable voting bloc and boosting voter registration.” The article continues:

Already, the movement has fired up some voters. The progressive non-profit Rock The Vote registered 150,000 new voters in the first two weeks of June, the highest tally of any two-week period in the 2020 election cycle. And despite significant obstacles at the polls, Democrats in Georgia cast more than 1 million ballots in the state’s June 9 primary, breaking the record set in the 2008 contest between Barack Obama and Hillary Clinton. “People were in line for hours,” says Nse Ufot, executive director of the New Georgia Project, which registered hundreds of voters at Black Lives Matter protests ahead of the primary. “Can you imagine the strength, the resolve, the steely-eyed determination that folks are going to have when they go to the polls in November?”

12. The party’s official website, Democrats.org, features a page entitled, “Black Lives Matters Organizing Resources” that offers links to petitions demanding prosecution of the officers involved in the deaths of George Floyd, firing of the officers involved in the death of Breonna Taylor, one from a related organization called “Color of Change” that promotes “a platform of structural demands to reduce, over time, the impacts of policing in concrete and tangible ways” and various other resources, including “Other ways to get involved.” The Democratic Party web page for Black Lives Matter also gives advice to street protesters to avoid law enforcement investigations, noting, “Signal has just introduced a ‘blur tool’ for your photos. They write, ‘The latest version of Signal for Android and iOS introduces a new blur feature in the image editor that can help protect the privacy of the people in the photos you share. Now it’s easy to give every face a hiding place, or draw a fuzzy trace over something you want to erase.’”

13. Few politicians have made the commitment to BLM more central to their work in government than the Mayor of the City of New York, defendant Bill De Blasio, who is a Democrat.

14. A New York *Post* article from July 10, 2020 entitled, “De Blasio doubles down on support of Black Lives Matter protests in NYC” observed as follows:

Mayor Bill de Blasio doubled down Friday on his decision to bless Black Lives Matter marches wherever and whenever they may happen while pulling the permits for the Big Apple’s usual slate of summertime parades and street festivals due to the threat posed by large gatherings amid the coronavirus.

“I’ve said many times — the protests, this is a particular moment in history where 400 years of oppression, 400 years of racism are being addressed in a very powerful way,” Hizzoner said. “That can’t compare to anything else.”

De Blasio made the remarks after again reiterating that it would be unsafe to allow parades and festivals that often bring tens of thousands to the streets because of the risk of transmitting COVID-19 — and the need to use the city’s public space and resources to bolster its street closure programs for pedestrians and restaurants.

15. As part of that commitment, on the morning of July 9, 2020, New York City employees – including defendant De Blasio – and private citizens began painting “Black Lives Matter” in large, bright yellow letters, as shown below, on Fifth Avenue in front of Trump Tower, a building owned and named after President Donald J. Trump and where he maintains a residence.



Photograph published by USA Today, Mark Lennihan, AP. July 9, 2020

16. Upon information and belief, this painting of a public street, described by defendant De Blasio as a “mural,” was undertaken by the New York City Department of Transportation (“DOT”) at an initial cost of approximately \$6,000 in funds allocated to the DOT for transportation-related purposes.

17. Pursuant to regulations posted by the City of New York at NYC Park’s website: <https://www.nycgovparks.org/art-and-antiquities/temporary-guidelines/murals>, citizens and organizations may only submit requests to paint murals in NYC Parks, not on New York City streets.

18. Nonetheless, based on the apparent change of policy concerning murals, on the evening of July 9, 2020, plaintiff submitted a request to defendant de Blasio requesting to paint a message of its own on a New York City street, stating as follows:

In light of New York City’s decision to open Fifth Avenue as a public fora and permit a bright yellow “Black Lives Matter” mural to be painted on the street, I write on behalf of Women for America First to express our organization’s interest in likewise painting a mural of our own.

Women for America First is a Virginia-based nonprofit that routinely holds events in New York City, has thousands of supporters nationwide—many of whom reside in New York City, including myself—and consistently strives to promote the empowerment of women.

In light of your generosity in opening up historic Fifth Avenue as a public fora by allowing the Black Lives Matter organization to paint their motto, our organization, too, would like to paint a mural of our motto—“Engaging, Inspiring and Empowering Women to Make a Difference!”—on Fifth Avenue, or another similar street within the city’s jurisdiction. In the event your Honor does not allow our organization to use Fifth Avenue, we propose painting our mural on FDR Drive outside Gracie’s Mansion. Alternatively, we are amenable to painting our mural on 42nd Street near Times Square, or even City Hall Park should you prefer.

Regarding due concern, we would use the identical color paint and font as the Black Lives Matter organization, self-fund such painting, and we further agree that the square footage used for our mural would be equal to the square footage used for the Black Lives Matter organization’s mural.

Women for America First is cognizant that we will likely need local authorities to assist us in traffic diversion and parking restrictions while the painting is completed. Of course, we are amenable to completing the painting at any hour most convenient for your Honor and the City of New York.

Thank you for your time and consideration of our request during a time in which our message could not be more important for our nation. We look forward to your response within three (3) business days.

19. On July 14, 2020, plaintiff transmitted a hard copy of the above-referenced request via FedEx to Mayor de Blasio's office, which was received on July 15, 2020.

20. By the date hereof, plaintiff still has not received a response from defendant de Blasio regarding this request, which he acknowledged receiving in a press conference on July 23, 2020.

21. When questioned about the request, defendant de Blasio stated that the Black Lives Matter movement "transcends any notion of politics," and he defended allowing the words to be painted on streets across the city while not approving similar mural requests from groups like the pro-cop Blue Lives Matter. "This is about something much bigger than any one group," de Blasio added. "This is about righting a wrong and moving forward. So I think that's the right approach."

22. Upon information and belief, the Black Lives Matter organization did not submit a formal request through established channels to submit such requests to paint its mural on Fifth Avenue or other duplicative murals that have subsequently been allowed, by defendants, to be painted on streets throughout New York City.

23. A New York *Post* report published on July 23, 2020 states:

When asked if de Blasio will approve the requested "Blue Lives Matter" mural, City Hall spokeswoman Julia Arredondo said last week: "It's not open season to paint our streets. DOT has an application process, and requests must go through their site, not open letters.

"For all lives to matter, we must first make clear that black lives matter. That is why we approved the murals and met those words with actions," Arredondo said.

24. On information and belief, there is no “application process” for painting political messages, murals or other non-traffic-related messages on New York City streets.

25. Defendant de Blasio ran in the Democratic primary for President in 2020 and, on information and belief, has political ambitions to run for national or other elected office as a Democrat after the end of his final term as Mayor of New York City or to be appointed to a prominent position in an anticipated Biden Administration.

26. On information and belief, de Blasio’s conduct as alleged herein is intended as a political gesture to the BLM movement and those sympathetic to it which has been done in order to enhance his future prospects as a Democratic candidate for office or appointee and by rallying BLM support for Democrats, including in the 2020 Presidential election.

COUNT I

VIOLATION OF 42 U.S.C. § 1983

27. Plaintiff incorporates paragraphs 1-12 by reference as if fully set forth herein.

28. Defendants, acting under color of New York law, have deprived and continue to deprive plaintiff of its First Amendment Rights guaranteed by the U.S. Constitution in violation of 42 U.S.C. § 1983, by, *inter alia*:

- a. Allowing New York City streets to be used for the painting of partisan political messages;
- b. Denying plaintiff the timely opportunity to use New York City streets to paint its own political or expressive message;
- c. Depriving Plaintiff of its right to paint a political or expressive message on a New York City street for reasons that are not narrowly tailored to a compelling government interest;

- d. Depriving plaintiff of its right to paint a political or expressive message on a New York City street for reasons that are not substantially related to an important government interest;
- e. Failing to provide a reasonable basis for denying plaintiff the opportunity to paint its political or expressive message on a New York City street;
- f. Favoring the viewpoint of the political message painted on Fifth Avenue and other New York City streets over the message plaintiff has requested to paint;
- g. Expending DOT funds on painting, maintaining, and endorsing the expressive message of one organization over plaintiff's message;
- h. Failing to provide reasonable, non-arbitrary processes and procedures for timely consideration of plaintiff's expressive message; and
- i. Engaging in preferential political speech in favor of a partisan organization that supports his own political ambitions.

29. Plaintiff is suffering irreparable harm as a direct and proximate result of Defendants' deprivation of Plaintiff's First Amendment rights in violation of 42 U.S.C § 1983 and will continue to suffer such irreparable harm unless defendants' unlawful conduct is enjoined.

30. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

- a. Declare defendants' conduct unconstitutional in violation of plaintiff's First Amendment Rights and 42 U.S.C. § 1983;
- b. Enjoin defendants from continuing to deprive plaintiff of its First Amendment rights as guaranteed by 42 U.S.C. § 1983;
- c. Order defendants to issue a permit allowing plaintiff to paint its expressive message on Fifth Avenue at or near defendant's mural or one of the substantially similar streets plaintiff proposed as reasonable alternatives for the same number of days as the "Black Lives Matter" mural has and will continue to exist on Fifth Avenue;
- d. Award attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
- e. Grant any further relief this Court deems just and proper.

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By: 
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Attorneys for Plaintiff

Dated: July 23, 2020



July 9, 2020

Via Email

Hon. Bill de Blasio, *Mayor*
City Hall
New York, NY 10007

RE: Street Mural, Women for America First

Dear Mayor de Blasio:

In light of New York City's decision to open Fifth Avenue as a public fora and permit a bright yellow "Black Lives Matter" mural to be painted on the street, I write on behalf of Women for America First to express our organization's interest in likewise painting a mural of our own.

Women for America First is a Virginia-based nonprofit that routinely holds events in New York City, has thousands of supporters nationwide—many of whom reside in New York City, including myself—and consistently strives to promote the empowerment of women.

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Women for America First is cognizant that we will likely need local authorities to assist us in traffic diversion and parking restrictions while the painting is completed. Of course, we are amenable to completing the painting at any hour most convenient for your Honor and the City of New York.

Thank you for your time and consideration of our request during a time in which our message could not be more important for our nation. We look forward to your response within three (3) business days.

Very truly yours,

Kylie Jane Kremer, *Executive Director*

**PLAINTIFF'S
EXHIBIT**

1

IMPORTANT!

We are continuing to respond to the impact of COVID-19 around the world. [See our latest updates.](#) For COVID-19-related recipient closures, you can [redirect packages](#), [Ask FedEx](#), or contact the shipper.



3948-2046-6191



Delivered
Wednesday 7/15/2020 at 9:20 am



DELIVERED

Signed for by: G.GLENN

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FROM
New York, NY US

TO
NEW YORK, NY US

Shipment Facts

TRACKING NUMBER
3948-2046-6191

SERVICE
FedEx Standard Overnight

WEIGHT
0.5 lbs / 0.23 kgs

SIGNATURE SERVICES
Direct signature required

DELIVERED TO
Receptionist/Front Desk

TOTAL PIECES
1

TOTAL SHIPMENT WEIGHT
0.5 lbs / 0.23 kgs

TERMS
Shipper

PACKAGING
FedEx Envelope

SPECIAL HANDLING SECTION
Deliver Weekday, Direct Signature Required

STANDARD TRANSIT
 7/15/2020 by 3:00 pm

SHIP DATE
 Tue 7/14/2020

ACTUAL DELIVERY
Wed 7/15/2020 9:20 am

Travel History

Local Scan Time

Wednesday, 7/15/2020

9:20 am	NEW YORK, NY	Delivered
8:20 am	NEW YORK, NY	At local FedEx facility
8:20 am	NEW YORK, NY	On FedEx vehicle for delivery
7:52 am	NEW YORK, NY	At local FedEx facility

7:35 a.m.

NEW YORK, NY

At local FedEx facility

6:42 am

NEWARK, NJ

Departed FedEx location

Tuesday, 7/14/2020

10:12 pm

NEWARK, NJ

Arrived at FedEx location

9:38 pm

NEW YORK, NY

Left FedEx origin facility

1:41 pm

NEW YORK, NY

Picked up

Tendered at FedEx Office

12:41 pm

Shipment information sent to FedEx

Request Proof of Delivery



For detailed proof of delivery, enter the 9-digit shipper or payer FedEx account number associated with this shipment.

TRACKING NO. OR NICKNAME

DESTINATION

SIGNATURE IMAGE

ACCOUNT NUMBER

3948-2046-6191

NEW YORK, NY

Yes

ACCOUNT NUMBER

View/print letter



SUBMIT