

Metro

	SECTIONS	 MY SAVED 
NEWS ▶	METRO	
ARTS ▶	BUSINESS ▶	
SPORTS ▶	OPINION ▶	
LIFESTYLE ▶	MAGAZINE ▶	
INSIDERS ▶	TODAY'S PAPER ▶	
LOTTERY ▶	OBITUARIES ▶	
GLOBE NORTH ▶	GLOBE SOUTH ▶	
GLOBE WEST ▶	GETTING IN ▶	

Metro

Five Occupy defendants seek dismissal of charges

By **Matt Rocheleau** | GLOBE CORRESPONDENT FEBRUARY 05, 2013

 ARTICLE

 COMMENTS



KAYANA SZYMCZAK FOR THE BOSTON GLOBE

Occupy defendants (from left) Kerry McDonald, Brianne Milder, Andrea Hill, and Tammi Arford in court Monday.

PRINT REPRINTS E-MAIL SHARE

A judge will determine next week whether to dismiss criminal charges against five people who were arrested during the Occupy Boston encampment in 2011.

The five argue that their arrests were an unconstitutional infringement of their First Amendment rights. The outcome could set an important precedent for similar cases, including nearly two dozen others who are fighting charges.

At Boston Municipal Court Monday afternoon, Associate Justice Mark Hart Summerville heard brief arguments on the motion to dismiss. But he said he wanted to wait to make a decision on the motion until the case's scheduled trial date on Feb. 11.

About 185 people were arrested on charges, mostly of trespassing or unlawful assembly, during two 2011 police raids on the Occupy camp along the Rose Fitzgerald Kennedy Greenway, the first when the group tried to expand the camp on Oct. 11 and the second when police shut down the camp on Dec. 10 in an

overnight raid.

Protesters, inspired by Occupy Wall Street in New York, were calling attention to the nation's economic inequality.

All of those arrested were provided with free legal representation by the Massachusetts chapter of the National Lawyers Guild. For most defendants, prosecutors agreed to drop charges or convert them into civil infractions, which are settled by paying a fine.

But 27 defendants have declined those offers, pleading not guilty to the charges and continuing to fight in court. Their court proceedings have been split into four groups of five codefendants and a fifth group with seven.

Andrea Hill, Ashley Brewer, Brianne Milder, Tammi Arford, and Kerry McDonald, the five codefendants slated to go to trial on Feb. 11, are the first of the group to go before a judge.

No trial dates have been set in the other cases, said Urszula Masny-Latos, executive director of the lawyers guild.

The defendants argue that the area where they gathered, Dewey Square, is state-owned land managed by a private nonprofit and created to be public space. They note that the nonprofit had written a letter before the raids saying it would allow the encampment to stay.

"Charging them with criminal conduct for exercising those rights was plainly unlawful and in violation of their constitutional rights to assembly and free speech under the First Amendment to the United States Constitution and Articles 16 and 19 of the Massachusetts Declaration of Rights," the lawyers guild said in a statement.

But prosecutors cited a December 2011 decision by Suffolk Superior Court Judge Frances A. McIntyre saying that those arrested at the site were not immune from prosecution.

"While Occupy Boston protesters may be exercising their expressive rights during the protest, they have no privilege under the First Amendment to seize and hold the land on which they sit," McIntyre wrote in her decision.

Matt Rocheleau can be reached at mjrochele@gmail.com.



 ARTICLE

 COMMENTS

Learn more

[SUBSCRIBE](#) [BOSTON GLOBE INSIDERS](#) [REFER A FRIEND](#) [EPAPER EDITION](#)

MY ACCOUNT

[LOGOUT](#)

 [MY SAVED LIST](#)

[MANAGE HOME DELIVERY](#)

SOCIAL

[FACEBOOK](#)

[TWITTER](#)

[GOOGLE+](#)

CONTACT

[HELP](#)

[FAQS](#)

[GLOBE NEWSROOM](#)

[ADVERTISE](#)

MORE

[ARCHIVES](#)

[PRIVACY POLICY](#)

[TERMS OF SERVICE](#)

[TERMS OF PURCHASE](#)

[WORK HERE](#)

© 2013 THE NEW YORK TIMES COMPANY
