

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

THE CONTRIBUTOR, CALVIN HART,)
AND ANDREW HARRINGTON,)
)
Plaintiffs,)
)
v.)
)
CITY OF BRENTWOOD,)
)
Defendant.)

Civil Action No. _____

COMPLAINT

Plaintiffs The Contributor, Calvin Hart and Andrew Harrington, respectfully submit the following Complaint against Defendant City of Brentwood.

INTRODUCTION

1. This is an action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief to prevent an unconstitutional denial of the Plaintiffs' right of free speech and expression guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

PARTIES

2. Plaintiff The Contributor (hereinafter referred to as "Contributor" or "Plaintiff Contributor") is a Tennessee non-profit, tax-exempt corporation which has its principle place of business in Nashville, Davidson County, Tennessee. The Contributor is a street newspaper that has two principle purposes: first, to educate citizens about homelessness and poverty by devoting the content of the newspaper to articles covering those two topics and highlighting writing by persons who have experienced homelessness; and second, to give people who have experienced homelessness job skills, meaningful work and a micro-business selling newspapers

on the sidewalks of Nashville and surrounding communities. The Contributor is only sold by street vendors at various locations in Davidson County and the surrounding communities, including the City of Brentwood.

3. Plaintiff Calvin Hart (hereinafter referred to as “Mr. Hart” or “Plaintiff Hart”) is formerly homeless and lives in Nashville, Davidson County, Tennessee. Plaintiff Hart has been a vendor of The Contributor since January 11, 2011.

4. Plaintiff Andrew Harrington (hereinafter referred to as “Mr. Harrington” or “Plaintiff Harrington”) is formerly homeless and lives in Nashville, Davidson County, Tennessee. Plaintiff Harrington has been a vendor of The Contributor since October 26, 2010.

5. Defendant City of Brentwood (“City” or “Defendant Brentwood”) is a municipality organized pursuant to the Private Acts of the State of Tennessee. At all pertinent times herein, the City, acting under state law, enacted and enforced Ordinance 58-1 (“hereinafter “the Ordinance”), and is responsible for the Ordinance’s impact upon the Plaintiff and all other actions complained of herein.

JURISDICTION AND VENUE

6. This suit is for injunctive and declaratory relief. The causes of action for injunctive relief are provided by 42 U.S.C. §1983, which permits actions at law and suits in equity against any person who, under color of a state statute, causes injury to another in violation of the Constitution of the United States. The cause of action for declaratory relief arises under 28 U.S.C. § 2201, which permits a court to declare the rights of any interested party in a case of actual controversy.

7. This suit presents questions that arise under the Constitution of the United States. Accordingly, jurisdiction is provided by 28 U.S.C. §§ 1331, 1343(a)(3), 1367 and 2201.

8. Venue is proper in the Court under 28 U.S.C. § 1391, as Defendant may be found in this district.

STATEMENT OF FACTS

9. On information and belief, The Contributor began selling newspapers and sharing its message in the City of Brentwood in 2010.

10. Vendors of The Contributor, including Plaintiffs Hart and Harrington are required to wear a badge and may wear official Contributor gear (bags, aprons, shirts, etc.) which identify them as an official vendor of The Contributor. As a vendor of The Contributor, Plaintiffs Hart and Harrington are required to remain on a sidewalk or public right of way and only approach a stopped vehicle when requested to do so by the occupant of the vehicle.

11. Vendors of The Contributor, including Plaintiffs Hart and Harrington, sell The Contributor in a manner that does not obstruct or block the flow of pedestrian traffic on sidewalks.

12. Vendors of The Contributor, including Plaintiffs Hart and Harrington, sell The Contributor in a manner that does not obstruct or block the flow of vehicular traffic on public streets.

13. At all times material hereto, the City of Brentwood Ordinance Sec. 58-1 has been in force. The Ordinance, in pertinent part, reads as follows:

Sec. 58-1 – Use for displaying, selling, etc. goods and merchandise

Except as permitted by other portions of this Code, no person shall use or occupy any portion of any public street, alley, sidewalk or right of way for the purpose of storing, selling or exhibiting any goods, wares, merchandise or materials.

14. Section 18-136 of the Ordinance allows for charitable organizations to obtain permits and for the handing out of free materials in traditional public fora.

15. On January 22, 2011, Plaintiff Hart was issued Citation A 97893 for alleged violation of the Ordinance. Plaintiff Hart was selling the Contributor from the sidewalk at or near the intersection of Franklin Road and Maryland Way. Plaintiff Hart was complying with The Contributor Vendor Code of Conduct. On March 18, 2011, Plaintiff Hart was found guilty of violation of the Ordinance.

16. On January 21, 2011, Plaintiff Harrington was issued Citation A 96613 for alleged violation of the Ordinance. Plaintiff Harrington was selling The Contributor from the sidewalk at or near the intersection of Franklin Road and Maryland Way. Plaintiff Harrington was complying with The Contributor Vendor Code of Conduct. On March 18, 2011, Plaintiff Harrington was found guilty of violation of the Ordinance.

17. On the day they received their respective citations, Plaintiffs Hart and Harrington were not selling The Contributor in a manner that obstructed or blocked the flow of vehicular traffic on public thoroughfares.

18. The sidewalks maintained by the Defendant are traditional public fora, and the Ordinance irrationally and unreasonably regulates speech, expressive activity, as well as lawful, non-misleading commercial speech in that traditional public fora.

19. On March 18, 2011, Plaintiffs Hart and Harrington were collectively sentenced to pay a fine of \$125 payable at such time as an appeal was properly heard and ruled upon.¹

20. Plaintiffs Hart and Harrington subsequently perfected a timely appeal which appeal was abandoned on June 17, 2011. Upon withdrawal of the appeal, the fine imposed on Plaintiffs Hart and Harrington was paid.

21. Since Plaintiffs Hart and Harrington received their citations in January of 2011,

¹ Patrick Green, Joseph Krantz, Roy Moore, Geneva Office and Jason Schafer were also issued citations for the selling of the Contributor in Brentwood and were included in the collective fine assessed against Contributor vendors.

none of them have attempted to sell The Contributor in the City of Brentwood in fear that they would be cited again for violation of the Ordinance.

22. Since Plaintiffs Hart and Harrington received their citations in January of 2011, The Contributor has not recommended that any vendors sell The Contributor in the City of Brentwood in fear that any such new vendors would be cited again for violation of the Ordinance.

23. Plaintiffs Hart and Harrington sell The Contributor both as a means of livelihood and to provide information to potential readers about homelessness.

24. Plaintiffs wish to sell The Contributor in the City of Brentwood but are unable to do so for fear of citation under the Ordinance.

25. Plaintiffs have no adequate remedy at law at this time to correct the continuing deprivations of their First Amendment rights.

**COUNT I: VIOLATION OF THE FIRST AMENDMENT RIGHTS TO FREE SPEECH, EXPRESSION
AND FREEDOM OF THE PRESS**
(42 U.S.C. § 1983)

26. Plaintiffs re-allege and re-aver all of the allegations contained in the previous paragraphs.

27. Plaintiffs' rights to freedom of speech, expression and the press, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, are being violated by the overbroad Ordinance.

28. Defendant cannot establish a justification sufficient to regulate Plaintiffs' speech, nor is the Ordinance narrowly tailored to serve any such justification advanced by Defendant.

29. The Ordinance fails to leave open ample alternative avenues of communication to allow Plaintiffs to share their message about issues surrounding homelessness and poverty as it is

sold by homeless and formerly homeless individuals on the street as an alternative to panhandling.

30. Defendant acted under color of state law when it enacted this Ordinance and continues to enforce the Ordinance to this date. The enforcement of this Ordinance abridges Plaintiffs' rights to freedom of speech, expression, and the press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, in violation of the protections of 42 U.S.C. § 1983.

31. As a result of Defendant's enforcement of the Ordinance, the Plaintiffs have been limited in the sale of The Contributor in the City of Brentwood.

COUNT II: ARTICLE I, SECTION 19 OF THE TENNESSEE CONSTITUTION

32. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this complaint.

33. Article I, Section 19 of the Tennessee Constitution provides:

That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty...

34. Plaintiffs' rights to freedom of speech, expression and the press, guaranteed by the Article 1 Section 19 of the Tennessee Constitution are being violated by the Ordinance. Defendant cannot establish a justification sufficient to regulate Plaintiffs' speech, nor is the Ordinance narrowly tailored to serve any such justification advanced by Defendant.

35. Defendant acted under color of state law when it enacted this Ordinance and continues to enforce the Ordinance to this date. The enforcement of this Ordinance abridges

Plaintiffs' rights to freedom of speech, expression, and the press as guaranteed by Article 1, Section 19 of the Tennessee Constitution.

36. As a result of Defendant's enforcement of the Ordinance, the Plaintiffs have been limited in the sale of The Contributor in the City of Brentwood.

RELIEF REQUESTED

WHEREUPON in light of the foregoing, Plaintiffs respectfully requests the following relief:

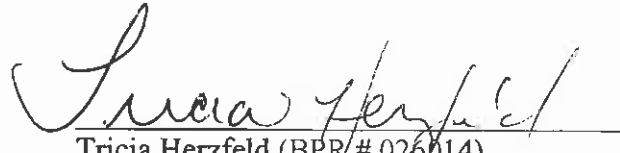
37. That this Court determine, find, and declare that the Ordinance is unconstitutional, and a deprivation of rights guaranteed to Plaintiffs under the United States Constitution, Amendments I and XIV, actionable through 42 U.S.C. § 1983;

38. That this Court grant a preliminary, and in due course, a permanent injunction enjoining Defendant from enforcing the Ordinance or taking any action against Plaintiffs and any vendor of The Contributor on account of the events and transactions described herein;

39. That this Court award Plaintiffs' reasonable attorney's fees and costs, as authorized by 42 U.S.C. § 1988, and;

40. That Plaintiff be awarded all other relief as the Court finds equitable, proper and just.

Respectfully submitted,



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