

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

BRYAN ROTHAMEL	:	
	:	
Plaintiff,	:	COMPLAINT
	:	
vs.	:	Civil Action No. 3:11cv_____
	:	
FLUVANNA COUNTY, VIRGINIA,	:	
	:	
Defendants.	:	
	:	

Plaintiff, Bryan Rothamel, by and through his attorneys, alleges as follows:

INTRODUCTION

1. This is an action challenging the criminalization of protected First Amendment speech under the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION

2. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over this action under 28 U.S.C. §§1331 and 1343(a)(3) and (a)(4) and 28 U.S.C. §§2201 and 2202.

VENUE

3. Venue properly lies in this District pursuant to 28 U.S.C. §§ 1391(b)(2) because defendant County of Fluvanna is located within the boundary of the Charlottesville Division.

PARTIES

4. Plaintiff Bryan Rothamel is an adult, a United States citizen and a resident of

Fluvanna County, Virginia.

5. Defendant Fluvanna County (hereinafter “County”) is a political subdivision of the Commonwealth of Virginia; the County legislates ordinances through its legislative branch the Board of Supervisors.

FACTS

6. Mr. Rothamel has a blog entitled “FLUCO” (<http://flucoblog.com>) in which he writes about news and events in Fluvanna County. He has been providing this service since in or about October, 2009.

7. On numerous occasions, Plaintiff placed the seal of the County next to news articles about the county. Also included on his blog were verbatim news releases issued by the County with its official seal. These were scanned on to Mr. Rothamel’s blog site thereby displaying the county seal as it was placed in the news releases.

8. When the supervisors learned of the use of the County seal on the blog of Mr. Rothamel, they directed the county attorney to draft an ordinance prohibiting such use.

9. On September 15, 2010, the Board adopted the ordinance as drafted by the county attorney, codified as County Code, Chapter 2, Article 7, sec. 2-7-1, et seq., broadly prohibiting the display of the Fluvanna County seal unless expressly authorized by the Board of Supervisors. Such unauthorized use is a class 1 misdemeanor which carries a maximum sentence of 12 months in jail and/or a fine of up to \$2,500.

10. The relevant Code provisions in their entirety are as follows:

Article 7. Official County Seal

Sec. 2-7-1. Adoption of County Seal.

The seal of Fluvanna County is hereby adopted to be the seal currently in use by the County. The seal consists of a picture of the historic former Point of Fork Arsenal showing the Fluvanna River in the background with a branch from a persimmon tree above it in a circle, surrounded by the words "FLUVANNA COUNTY VIRGINIA—1777". The seal shall still constitute the seal whether in black and white, color or other hue or tone combination and regardless of the size, character or medium in which the same shall be depicted. (Ord. 9-15-10)

Sec. 2-7-2. Seal deemed property of the County; unauthorized use prohibited.

The seal of Fluvanna County is and shall remain the property of the County. No person, entity or organization shall exhibit, display, or in any manner utilize the seal or any copy, replication, facsimile or representation of the seal, whether in printed, electronic or other format, unless such use shall have been expressly authorized by the board of supervisors. It shall be presumed that the use of the seal on stationery or otherwise in the course of official business by any officer or employee of the County, including constitutional officers and their deputies and employees, shall have been authorized by the board of supervisors. (Ord. 9-15-10)

Sec. 2-7-3. Violation and penalty; other remedies.

Any person violating the provisions of this Article shall be punished in accordance with Section 1-10 of this Code, and shall, in addition, be subject to civil liability to the County for damages, injunction and other applicable civil or criminal remedies. (Ord. 9-15-10)

11. Mr. Rothamel does not profit from the use of the seal nor does the use of the seal in news stories about Fluvanna County, other than official news releases, suggest that the writing is an official statement of the county.

CAUSE OF ACTION

12. The language of the above ordinance is overbroad , sweeping within its prohibition any display or exhibition of the seal under any circumstances for any purpose. For example, the ordinance prohibits the display of the seal even when it is an accurate depiction of a county official speaking from a podium with the seal or with the seal in the background. Similarly, the depiction of the seal in a parody or editorial cartoon would be criminal under the ordinance as written. Thus, the ordinance on its face violates the First Amendment to the United

States Constitution.

13. The ordinance also violates the First Amendment rights of Plaintiff as applied to his use of the seal as described above.

14. Because of the overbroad language of the ordinance and because the ordinance was adopted, at least in substantial part, in order to prohibit Mr. Rothamel's depiction of the seal on his blog, Plaintiff has been chilled from utilizing the seal under any circumstances and for any purpose. He is rightly concerned that he may be criminally charged with violating the ordinance.

15. As a direct and proximate result of the passage of the ordinance, Mr. Rothamel has suffered damages, including, but not limited to, damages to his ability to communicate to the general public as well as emotional distress.

RELIEF SOUGHT

WHEREFORE, Plaintiff asks the Court for the following relief against the Defendant:

A. that a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring the Defendant's ordinance unconstitutional in violation of the First Amendment to the United States Constitution;

B. that a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring that Plaintiff's use of the seal of the County of Fluvanna in a news article is protected speech under the First Amendment to the United States Constitution;

C. that he be awarded compensatory, nominal and punitive damages;

D. that he be awarded costs and reasonable attorneys' fees pursuant to 42 U.S.C. §

1988; and,

E. such other and further relief as the Court may deem proper.

Respectfully submitted,
BRYAN ROTHAMEL
By counsel

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