

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

OSCAR MOULTRIE,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 2:10-cv-02584-RMG
)	
BERKELEY COUNTY, SOUTH CAROLINA,)	<u>COMPLAINT</u>
a body politic and corporate,)	
)	
<i>Defendant.</i>)	

COMES NOW the Plaintiff, Oscar Moultrie, by and through the undersigned attorneys, alleges and avers as follows:

Introduction

1. Generally, Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 for redress of the deprivation under color of statute, ordinance, regulation, custom or usage of certain rights secured to them by First and Fourteenth Amendments to the United States Constitution.

2. Plaintiff is entitled to immediate injunctive and declaratory relief preventing Defendant from enforcing an unconstitutional ordinance that violates Plaintiff’s fundamental rights under the First and Fourteenth Amendments to the United States Constitution.

Jurisdiction and Venue

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343, as it is an action seeking redress under the laws and statutes of the United States for rights secured by the Constitution and laws of the United States. This Court has jurisdiction to enter a declaratory judgment in favor of the Plaintiff under 28 U.S.C. §§ 2201-2202.

4. Venue properly lies in the District of South Carolina under 28 U.S.C. § 1391(b), as the Defendant resides within this District, the Defendant resides within the State of South Carolina, and a substantial part of the events giving rise to this action occurred within this District. Venue is proper in this division pursuant to Loc. Civ. R. 3.01DSC.

Parties

5. Plaintiff is an adult citizen of the State of South Carolina and resides at 1420 Matilda Circle, Pineville, South Carolina. The Plaintiff's residence is within and subject to the jurisdiction of Berkeley County, South Carolina.

6. Defendant is a body politic and corporate created and existing under the laws of the State of South Carolina, specifically S.C. Code §§ 4-1-10 and 4-3-80. In all respects set forth in this Complaint, Defendant acted under color of law of the State of South Carolina.

Factual Allegations

7. Plaintiff resides at a detached, single-family home (hereafter "the property") located at 1420 Matilda Circle, within Berkeley County, South Carolina.

8. Plaintiff lives on a thirty-nine acre tract of inherited land in a rural area of Berkeley County, initially given to slaves at the conclusion of the War Between the States. There is a familial relationship between each person living on the tract.

9. Plaintiff resides on approximately three acres, and he has full and complete control over the property and exclusive possession thereof. Plaintiff pays property taxes attributable to the property to his relative, Edgar Middleton, Jr.. Mr. Middleton then pays the taxes on the entire tract to Berkeley County. To the extent relevant, and/or necessary, Plaintiff owns other property within

Berkeley County in addition to the property located at 1420 Matilda Circle.

10. To the extent relevant, and/or necessary, Middleton does not otherwise restrict, prohibit, or in any way control Plaintiff's use of the property for expressive conduct as set for in ¶ 12 and the following paragraphs of this complaint.

11. Plaintiff Moultrie placed his mobile home on the property in 1996. His sister lived on the same tract of land prior to that date or him moving there.

12. Plaintiff holds sincere Christian religious beliefs and, pursuant to those beliefs, desires to share his Christian beliefs and Biblical Scriptures with others.

13. Pursuant to his religious beliefs, on or about September 2009, Plaintiff placed on the yard four (4) signs with the following religious messages:

- a. "READ 2 Chronicles 7:13,14 Deuteronomy 11:13-17"
- b. "What is the TRUE Gospel?"
- c. "READ Matthew 24: 15,16 I Peter 4:17"
- d. The last sign contained six separate Scripture references:
 - i. "I Peter 4:7 But the END of All Things is at Hand: be ye therefore sober, and watch unto prayer.
 - ii. Genesis 7:4 States that God would destroy the world in 7 days
 - iii. II Peter 3:8 States that 1 day is as 1000 years
 - iv. The flood of Noah's day took place in 4990 BC 7000 years after 4990 BC is AD 2011
 - v. God did destroy the world after 7 days on the 17th day of the second month

- vi. He will destroy it forever beginning on the 17th day of the second month which is May 21, 2001.[sic]”

14. In February 2010, Plaintiff placed three (3) additional signs on the property. These additional signs, which were purchased from Charleston Sign and Banner, were put up in a similar manner to the signs referred to in ¶ 13.

- a. “EZEKIEL Chapters 33-39 JEREMIAH Chapters 21-27
1THESSALONIANS Chapter 4 & 5.”
- b. “ECCLESIASTES 8:5 Whoso keepeth the commandment shall feel no evil thing: and a wise man’s heart discerneth both time and judgment.”
- c. “DANIEL Chapter 12 REVELATION Chapter 5 ZEPHANIAH Chapter 1”

15. The signs are 24 inches long and 18 inches wide and are made of cardboard with rigid plastic lamination. The signs were held by wire stands and the top of each sign was between three (3) and four (4) feet off the ground. The signs are constructed and were displayed in a manner consistent with political and/or commercial signs throughout Berkeley County. The signs contained speech of a religious nature.

16. Plaintiff received no complaints from any neighbor or passerby concerning the signs described in ¶¶ 13,14, and 15.

17. On March 3, 2010, Ronald Brewer, an employee of Berkeley County, mailed a notice (hereafter “the notice”) concerning an alleged violation at 1420 Matilda Circle. The notice was sent to Middleton’s Post Office Box. Middleton then hand delivered the notice to Plaintiff. A copy of the notice is attached to this Complaint as Exhibit A.

18. The notice identified “Sec. 18.4” of the Berkeley County Sign Control Ordinance

which used the descriptor “Sign Ordinance” and listed the Violation Type as “Sign Violation.” Next to “Comments” Ronald Brewer wrote:

“18.4. Permits required and application for permit.
Unless otherwise provided for herein, no sign shall be erected, replaced, relocated or altered without first obtaining a sign permit. All applications for sign permits shall be made in the Berkeley County Permitting Department.”

19. Next to “Corrections Required,” Ronald Brewer wrote: “[c]orrect it, remove it, or request a variance from Board of Zoning Appeal.” The Notice also set forth a compliance deadline of March 17, 2010. The bottom of the notice contained the following language: “[t]his notice is your opportunity to correct the above violation(s) in order to avoid further legal action.”

20. On information and belief, the Notice concerning the property was based upon Berkeley County Code of Ordinances, Appendix A, Article 18 titled “Sign Control” (hereafter the Ordinance). Under the Ordinance § 18.2(a)(30), a “sign” is defined as any structure or device “which transmits information or an idea.”

21. Under the Ordinance § 18.4, “[u]nless otherwise provided herein, no sign shall be erected, replaced, relocated or altered without first obtaining a sign permit. All applications for sign permits shall be made to the Berkeley County Permitting Department.”

22. The Ordinance § 18.5 sets forth exemptions from the requirement that erection of a sign requires a permit. Those exemptions include: “for sale,” “for rent,” and “for lease,” signs, “political signs,” and “flags and banners.” The Ordinances § 18.5's exemptions are exclusively content-based restrictions without an exemption for First Amendment content except as set forth in ¶ 23.

23. “Political sign” is defined in the Ordinance § 18.2(a)(22) as “[a] temporary off-

premises sign, which refers only to a political candidate or the issues involved in an upcoming political election.” The Ordinance § 18.2(a)(22) does not define either the term “election” or “issue.”

24. The Ordinance contains no provision setting forth the criteria upon which the Berkeley County Permitting Department will judge an application for a permit to erect a sign or any time within which the Defendant must make a determination about an application for a permit.

25. The Ordinance § 18.10 (b) states that no off-premises signs can be nearer than 1000 feet to any other off-premises sign, residence, public building, or etcetera. The Ordinance makes it nearly impossible to post any off-premises sign, including enumerated, exempted signs.

26. In order for Plaintiff to engage in conduct protected by the First Amendment, he must first obtain a permit and pay a fee of \$25.00 per sign. Defendant’s permit and fee requirements are a prior restraint and cause a chilling effect on the exercise of Plaintiff’s First Amendment rights. The fee represents a barrier to suppress the exercise of First Amendment rights.

27. On March 11, 2010, the Rutherford Institute sent a letter on behalf of Plaintiff to Ronald Brewer. The letter requested withdrawal of the notice because the Ordinance is unconstitutional on its face and as applied to Plaintiff’s signs on the property. Although the letter requested a response from Ronald Brewer, as of the date of filing, no response has been received. A copy of this letter is attached to the Complaint as Exhibit B.

28. Because of the threat to take legal action in response to the signs placed on the property, Defendant coerced Plaintiff to abandon his expressive activity by removing the signs with religious messages from his property on March 17, 2010. Although Plaintiff desires to place the signs back up on the property, due to the Notice and the threat by the Defendant to take legal action, Plaintiff has been coerced into refraining from reposting the signs or any other signs.

First Cause of Action
Violation of U.S. Const. Amend. 1 - 42 U.S.C. § 1983

29. The Plaintiff realleges and incorporates herein the foregoing paragraphs of this complaint as if repeated verbatim.

30. Plaintiff's placement of signs with religious messages at his residence constitutes speech and expression that is protected by the First Amendment to the United States Constitution.

31. The Ordinance adopted and enforced by Defendant constitutes a prior restraint on speech.

32. The Ordinance is unconstitutional as applied to Plaintiff, and Defendant has deprived and continues to deprive Plaintiff of his right to freedom of speech and expression provided by the First Amendment to the United States Constitution.

33. The Ordinance is violative of the First Amendment to the Constitution in the following particulars, including but not limited to:

- a. The Ordinance's exemptions are content-based without appropriate exemptions or exceptions for all conduct protected by the First Amendment.
- b. The Ordinance fails to provide reasonable alternative avenues for expressive conduct.
- c. The Ordinance provides unfettered discretion to a decision maker without a meaningful opportunity for a due process and/or judicial to challenge said decision.
- d. The Ordinance is over broad in that it prohibits constitutionally protected conduct without prior approval of a governing authority.
- e. The Ordinance acts as a prior restraint upon the exercise of rights protected by the First Amendment.
- f. The Ordinance requires a fee as a prerequisite for the exercise of rights protected by the First Amendment.

34. In adopting and enforcing the Ordinance against Plaintiff, the Defendant has and continues to act under the color of the law.

35. Defendant Berkeley County enforced the Ordinance because of the religious content of Plaintiff's signs.

36. The Ordinance is the official policy of Defendant.

37. The Plaintiff is entitled to relief under 42 U.S.C. § 1983 for the deprivation of his First Amendment rights caused by the Defendant.

Second Cause of Action
Violation of U.S. Const. Amend. 14 – 42 U.S.C. § 1983

38. The Plaintiff realleges and incorporates herein the foregoing paragraphs of this complaint as if repeated verbatim.

39. Plaintiff's religious signs placed on private property constitute expression and religious exercise that are protected by the guarantees to freedom of speech and to free exercise of religion set forth in the First Amendment to the United States Constitution.

40. Defendant's threats of enforcement of the Ordinance are acts of discrimination against Plaintiff. Defendant enforced the Ordinance because of the Plaintiff's exercise of his First Amendment rights, and the Ordinance deprives Plaintiff of equal protection of the law guaranteed by the Fourteenth Amendment of the United States Constitution.

41. Defendant's decision not to allow Plaintiff to display religious signs is arbitrary, capricious, and irrational discrimination and deprives Plaintiff of equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

42. In threatening the Plaintiff with or causing the Plaintiff deprivations of his constitutional rights, the Defendant has acted under color of law of the States of South Carolina.

43. The Plaintiff is entitled to relief under 42 U.S.C. § 1983 for the deprivation of rights caused by the Defendant.

Third Cause of Action
(Injunctive Relief)

44. The Plaintiff realleges and incorporates herein the foregoing paragraphs of this complaint as if repeated verbatim.

45. The Plaintiff requests that this Court enjoin the Defendant from enforcing the Ordinance.

Fourth Cause of Action
Declaratory Judgment Under 28 U.S.C. §§ 2201- 2202

46. The Plaintiff realleges and incorporates herein the foregoing paragraphs of this complaint as if repeated verbatim.

47. There presently exists between the Plaintiff and the Defendant an actual, justiciable controversy over whether Plaintiff may place signs upon the property and whether the Ordinance is unconstitutional on its face.

48. The Court should declare the respective rights and liabilities of Plaintiff and the Defendant regarding Plaintiff's right to place signs on the property and the constitutionality of the Ordinance.

49. A judgment should be entered under 28 U.S.C. § 2201 declaring that the Ordinance is unconstitutional on its face and/or as applied to Plaintiff and that Plaintiff have the right to place signs with religious messages on the property under the First Amendment to the United States Constitution.

Prayer for Relief

WHEREFORE, Plaintiff prays judgment be entered against Defendant as follows:

1. That a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring that the Ordinance is unconstitutional on its face and as applied to Plaintiff under the First Amendment to the United States Constitution;
2. That a preliminary injunction be entered forbidding the Defendant, its officers, and its agents from enforcing the Ordinance against the Plaintiff;
3. That an order be entered permanently enjoining the Defendant, its officers, and its agents from enforcing the Ordinance against Plaintiff;
4. That this Court award Plaintiff nominal and compensatory damages in an amount to be determined at trial;
5. That this Court order Defendant to pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 1988, together with costs of this litigation; and
6. Any and all such other and further relief as the Court may deem proper.

Dated: October 4, 2010

HAMILTON & ASSOCIATES, LLC

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