

In the United States District Court  
For The Middle District of Georgia  
Macon Division

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Richard Welch,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil Action File
	)	No.: _____
vs.	)	
	)	
RACHEL LORD, Elections Superintendent,	)	
LEE LORD, County Clerk and County	)	
Administrator, JOHN DOES I-IV,	)	
unidentified Washington County Sheriff's	)	
Deputies and City of Sandersville Police	)	
Officers, in their official and individual	)	
capacities, and SONNY PURDUE,	)	
Governor of the State of Georgia, in his	)	
official capacity,	)	
	)	
Defendants.	)	

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**VERIFIED COMPLAINT**

**COMES NOW** Richard Welch and brings this Complaint seeking declaratory and injunctive relief, and damages to redress the deprivation of rights secured by the Georgia Constitution and the First and Fourteenth Amendments to the United States Constitution, arising out of the unconstitutional removal and destruction of legally displayed political signs during an election March 15, 2005 in Washington County, Georgia.

**JURISDICTION AND VENUE**

1.

This action seeks to enforce and to vindicate rights conferred by the First and Fourteenth Amendments to the United States Constitution and by the Constitution of the State of Georgia. (GA. Const., Art. I, § I, Para. II, II, V, VII, & IX.).

2.

This Court has subject matter jurisdiction over the federal constitutional claim pursuant to 42 U.S.C. §1983, 28 U.S.C. §§ 1331 and 1343 (a) (3) and has supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C. § 1367 (a), because it is brought to redress deprivations, under color of state authority, or rights, privileges and immunities secured by the United States Constitution. Because the Court has federal jurisdiction, it has supplemental jurisdiction.

3.

Venue rests with this court and is proper pursuant to 28 U.S.C. §1391(b).

4.

All actions, and refusals to act, of the Defendants were under color of law and with deliberate indifference to Plaintiff's rights.

## **PARTIES**

5.

Plaintiff, Richard Welch is, and at all times hereto was, a natural person and resident of the State of Georgia, who resides within this judicial district in Washington County, Georgia. At the time of the events giving rise to this action, Mr. Welch was a private citizen attempting to conduct a campaign against the sales tax SPLOST referendum in a legal manner.

6.

Defendant Rachel Lord is a resident of the State of Georgia, residing within this judicial district in Washington County, Georgia, who, at all times relevant hereto, was the Washington County Elections Superintendent and the Judge of the Probate Court.

7.

Defendant Lee Lord is, and at all times relevant hereto was, a natural person, citizen, and resident of the State of Georgia, residing within this judicial district in Washington County, Georgia, and is the Washington County Clerk and Administrator.

8.

Defendant Purdue, sued only in his official capacity as Governor of the State of Georgia, is responsible for enforcing the laws of the State of Georgia and is a defendant in this action as it tests the constitutionality of O.C.G.A. §21-2-3 as being

void for vagueness on its face and as applied and as overly broad, as applied to restricting speech, political and commercial, that traditionally has not been restricted by the statute.

### **FACTUAL ALLEGATIONS**

9.

On March 15, 2005, a referendum was held in Washington County to determine whether to approve a Special Purpose Local Option Sales Tax ("SPLOST").

10.

Mr. Welch was opposed to the SPLOST tax and sought to campaign against its passage.

11.

On several occasions prior to the referendum, Mr. Richard Welch met with Defendant Rachel Lord and consulted with her regarding election laws and government ethics concerns that Mr. Welch had prior to planning or taking protected political activity to defeat the SPLOST referendum.

12.

On or about March 2, 2005, Mr. Welch filed a Campaign Contribution Disclosure Report Form with Defendant Rachel Lord's office, although neither Mr. Welch nor Defendant Rachel Lord believed it was necessary to file the Campaign Contribution Disclosure Report because Mr. Welch was protesting alone.

13.

On or about November 2004 and continuing regularly until March 15, 2005, Mr. Welch and Defendant Rachel Lord met or spoke on no less than ten occasions to read and discuss pertinent Ethics Codes and Regulations prior to the referendum election on March 15, 2005.

14.

Based on his conversations with Defendant Rachel Lord, Mr. Welch legally placed signs around the county encouraging citizens to vote against the SPLOST referendum.

15.

Approximately one-half of the signs which Mr. Welch had purchased and displayed legally were removed or destroyed.

16.

Mr. Welch also created signs that he could display on his truck on Election Day.

17.

Mr. Welch had been informed by both Defendant Rachel Lord and the Executive Director of the Georgia State Ethics Committee, Teddy Lee, that he would be within legal guidelines and the applicable election laws if the signs were placed outside of the zone near a polling site in which active campaigning is prohibited “within 150 feet of the outer edge of any building within which a polling place is

established.” See O.C.G.A. § 21-2-414.

18.

On Mr. Welch’s truck he displayed handmade signs asking voters to vote against the sales tax issue on the ballot.

19.

The bed of Mr. Welch’s truck had six signs containing political messages so that passersby could read the signs affixed to them without straining.

20.

The proposed 2005 SPLOST tax allocated \$900,000 to the Fire Department.

21.

As Mr. Welch traveled through Sandersville campaigning against the SPLOST tax, he was followed and observed by firemen.

22.

The firemen followed him around taking pictures and notes.

23.

A complaint with the ethics commission was later filed claiming that Mr. Welch had violated government ethics rules while campaigning against the SPLOST expenditure proposal.

24.

On the day of the election, March 15, 2005, Mr. Welch parked and locked his truck in a public parking lot so that it was outside the zone where campaign signs could not be posted.

25.

Mr. Welch parked his truck and left it unattended.

26.

Mrs. Joyce Norris, Chair of the Committee to pass the SPLOST tax, saw Mr. Welch's truck and signs opposing the SPLOST expenditures and phoned Defendant Lee Lord, County Clerk/Administrator, and requested that he take action to remove the signs.

27.

Defendant Lee Lord worked directly for the County Commissioners, the official county entity that makes the SPLOST expenditure proposal that is subject to the referendum.

28.

Mr. Theo McDonald, Executive Director of the Chamber of Commerce who

was in favor of the proposed SPLOST tax expenditures, saw Mr. Welch's signs and also placed a phone call to Defendant Lee Lord requesting that he take action to remove the signs.

29.

Defendant Lee Lord contacted the office of the Elections Superintendent, Defendant Rachel Lord, and informed her of the phone calls he had received regarding Mr. Welch's signs and requested that Defendant Rachel Lord take action to remove the signs from Mr. Welch's truck.

30.

On or about 9:30 a.m. or 10:00 a.m. on the morning of March 15, 2005, Defendant Rachel Lord solicited the assistance of unidentified officers from Sandersville Police Department, as well as unidentified deputies from the Washington County Sheriff's Department, and instructed them to remove and dismantle Mr. Welch's political signs from his truck.

31.

The police officers and sheriff's deputies physically dismantled and completely removed the signs from Mr. Welch's truck, throwing the remaining pieces into the bed of Mr. Welch's truck in a pile, destroying and/or damaging the signs and making it impossible for passersby to read the political messages thereon.

32.

When Mr. Welch came back to his truck and saw that his political signs had

been removed and damaged, a deputy sheriff informed him that the Elections Supervisor/Probate Judge, Defendant Rachel Lord, had requested their assistance in taking the signs off of Mr. Welch's truck; the deputy told Mr. Welch that he should speak to Defendant Rachel Lord if he had any questions.

33.

When Mr. Welch spoke with Defendant Rachel Lord, he was informed that because the truck was parked in a public parking lot, the signs were taken down because they were on "public property" in violation of O.C.G.A. §21-2-3(a).

34.

Defendant Rachel Lord gave Mr. Welch a copy of O.C.G.A. §21-2-3, the Georgia Code she used as authority for removing and damaging his political signs.

35.

O.C.G.A. §21-2-3(a) provides that "[i]t shall be unlawful for any person to place campaign posters, signs, and advertisements (1) Within the right of way of any public streets, roads, or highways; (2) on any public property or building" and that "[a]ny person who violates this Code section shall be guilty of a misdemeanor."

36.

There are other vehicles on which commercial signs are affixed and the vehicles are routinely parked or traveling in similar locations.

37.

At no time did anyone from Washington County contact Mr. Welch regarding

the signs on his truck or seek the removal of the truck signs.

38.

In addition to the signs that Mr. Welch had posted on his truck, Mr. Welch placed smaller signs around Sandersville with an anti-SPLOST political message.

39.

Many of the signs which Mr. Welch had placed around Sandersville had been removed and thrown into the bed of Mr. Welch's truck, under the destroyed and dismantled political signs that the police officers and sheriff's deputies had unlawfully removed from, and thrown into a pile in the bed of, his truck.

### **Count I**

#### **First Amendment Violations**

40.

Plaintiff restates, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

41.

At all times relevant hereto Defendants were acting under color and authority of state law.

42.

Defendants caused the chilling of Mr. Welch's right to free speech by destroying property designed to express a position on a time-sensitive issue, and by imposing, approving, ratifying, and enforcing the actions taken against him.

43.

Defendants have caused Mr. Welch to suffer, and he will continue to suffer, pain, humiliation, consternation, and emotional distress because of Defendants' deprivation of his constitutionally protected rights.

44.

Because of Mr. Welch's lawful exercise of his rights under the First and Fourteenth Amendments and the exercise of his constitutionally protected freedom of speech, Defendants caused the taking of Mr. Welch's property and liberty interests without due process of law and in violation of equal protection.

45.

Mr. Welch is uncertain and insecure regarding his right to place election and campaign signs in public parking lots, streets and sidewalks, and in other public places.

46.

Mr. Welch seeks a declaration that campaign signs displayed on a vehicle that is parked or traveling on public property outside of the restricted election zone are protected by the United States and Georgia Constitutions.

47.

Mr. Welch has suffered, is suffering, and will, with reasonable certainty, continue to suffer in the future, because of the deprivation his property and constitutional rights caused by Defendants, and enunciated herein. Mr. Welch has

no adequate remedy at law other than this action.

**COUNT II**

**FOURTH AMENDMENT CLAIM**

48.

Plaintiff restates, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

49.

Defendants used excessive and unnecessary force to remove, break, damage and otherwise destroy Mr. Welch's political signs in violation of his Fourth Amendment right to be free from unreasonable searches and seizures, as applied to the states through the Fourteenth Amendment.

**COUNT III**

**FOURTEENTH AMENDMENT CLAIM**

50.

Plaintiff restates, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

51.

Defendants unlawfully caused Mr. Welch's signs to be broken and otherwise destroyed in violation of the Fourteenth Amendment right that no citizen shall be deprived of property, except by due process of law.

**GEORGIA CONSTITUTIONAL CLAIMS**

52.

Plaintiff restates, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

53.

To the extent that the actions complained of herein violate the First Amendment to the United States Constitution, they also *per se* violate Article I, Section I, Para. II, III, V, VII, IX and XIII of the Georgia State Constitution.

### **PRAYERS FOR RELIEF**

**WHEREFORE**, having fully stated his claims against the Defendants, the Plaintiff demands judgment against each of the Defendants as follows:

- A. A declaration that the acts and practices complained of herein are in violation of the First Amendment of the U. S. Constitution, as applied to the states through the Fourteenth Amendment, the Georgia Constitution and a preliminary and permanent injunction against the further enforcement thereof;
- B. A declaration that the statute is unconstitutional as applied to political, campaign and commercial signs attached to or displayed by vehicles, and/or a private individual, in violation of the First Amendment of the U.S. Constitution, as applied to the states through the Fourteenth Amendment, and the Georgia Constitution and a preliminary and permanent injunction against the further enforcement thereof because the restriction is overly broad, restricting protected activity;
- C. An award of compensatory damages against the defendant in an amount to be proven at trial;

- D. An award of punitive damages against individual Defendants in an amount to be proven at trial;
- E. An award of attorney fees and costs of suit pursuant to 42 U.S.C. § 1988 and Fed.R.Civ.P. 54, or otherwise provided by law and;
- F. Such other legal and equitable relief as this Court shall, in the sound exercise of its discretion, deem just.

This the \_\_\_\_ day of October, 2005.

Respectfully submitted,

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