

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

WILLIAM MITCH LAWSON,

:

GREEN PARTY OF GEORGIA, and

:

Civil Action File No.

LIBERTARIAN PARTY OF GEORGIA,

:

Plaintiffs,

Jury Trial Demanded

:

vs.

:

:

THE CITY OF ROME,

:

:

Defendant.

:

COMPLAINT

COME NOW William Mitch Lawson (hereinafter “Mitch Lawson”), the Green Party of Georgia (hereinafter the "Green Party") and the Libertarian Party of Georgia (hereinafter the “Libertarian Party”) and bring this Complaint seeking declaratory and injunctive relief and damages for violation of the rights to free speech, due process, and equal protection when the City of Rome adopted and enforced an ordinance criminalizing the use and enjoyment of city parks. Plaintiffs have been prosecuted or threatened with prosecution when they have sought to peaceably collect signatures in Rome parks to place third-party candidates on the Georgia general election ballot.

JURISDICTION AND VENUE

1.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. section 1983, 28 U.S.C. section 1331, and 28 U.S.C. section 1343 and 28 U.S.C. section 1367. Venue rests with this Court.

PARTIES

2.

Plaintiff Mitch Lawson was a representative of the Green Party of Georgia who was charged with violating Rome City Code section 15-153 and who seeks to engage in similar conduct in the future which may violate Rome City Code section 15-153.

3.

Plaintiff, the Libertarian Party of Georgia, is dedicated to protecting liberty and effecting policy through electing candidates, and has approximately 1000 members in the State of Georgia. Because of Georgia's restrictive ballot access laws, the Libertarian Party of Georgia must focus countless hours on obtaining signatures from citizens to appear on the ballot. Access to public areas in order to speak with Georgia citizens about our message is critical to our mission. The Libertarian Party seeks to engage in conduct in the future which may violate Rome City Code section 15-153 similar to the conduct engaged in by Plaintiff Lawson referenced in paragraph 2 of this Complaint.

4.

Plaintiff, the Georgia Green Party, is organized to provide an electoral tool for the grassroots movement for social justice, peace and non-violence, participatory democracy and ecological sustainability. The Green Party is an independent political

party, organized as a political body under the laws of Georgia, with over 400 members across the state. The Green Party seeks to qualify in the 2004 election cycle to retain ballot access and eventually to qualify as a political party. The Georgia Election Code requires that the Green Party file nominating petitions with tens of thousands of valid signatures in order to be placed on the ballot. The Green Party's ability to comply with these requirements of the Election Code in furtherance of its mission depends on its state and federal right to engage the public and to petition in traditional public fora being respected.

5.

Defendant, the City of Rome, is subject to the jurisdiction and venue of this Court. Service of process may be effectuated on the Chairman of the Rome City Commission, Ronnie Wallace, 601 Broad Street, Rome, Georgia 30162. At all times relevant hereto the City of Rome acted within the scope of its authority as a municipality chartered under the laws of the State of Georgia.

FACTUAL ALLEGATIONS

The Park Ordinance

6.

Plaintiffs' ability to exercise their constitutional rights of freedom of self-expression by seeking signatures for a petition so that their candidates could appear on the general election ballot access was curtailed by the City of Rome in 2002 when the City Commission of Rome adopted a city code provision, codified at present as section 15-153 (hereinafter the "ordinance.") The Rome Police Department has enforced this ordinance since that time.

7.

The ordinance makes it unlawful for "any person to engage in any activity within a recreation facility that could cause injury to other persons or interfere with the use and enjoyment of the recreation facility by other persons." *See* Rome City Code section 15-153.

8.

The ordinance encompasses "solicitation of a political petition in a city park."

Plaintiffs' Problems With the Park Ordinance

9.

Plaintiff Lawson is a political activist, and a Green Party representative.

10.

On July 4, 2002, at Rome's Ridge Ferry Park, Lawson was peaceably asking persons among a crowd of 20,000 to sign a petition for the Green Party to appear on the general election ballot.

11.

Representatives of Plaintiff Libertarian Party of Georgia engaged in similar conduct on the same day and place to have their candidates appear on the general election ballot.

12.

Lawson was arrested and removed from Ridge Ferry Park by the Rome City Police Department for his behavior and charged under Rome City Code section 15-153 with "solicitation of a political petition in a city park." *See Exhibit "A."*

13.

Other volunteers for both the Green Party and Libertarian Party were threatened with arrest and forced to stop their activities and/or leave the park to avoid arrest.

14.

Individuals who were selling glo-sticks and food items commercially were not required to leave the park and were not arrested.

15.

The above-described police enforcement of the Rome City Code section 15-153 by the Rome Police Department has interfered with Plaintiffs' constitutional rights.

16.

The charges against Plaintiff Lawson were dismissed by the Municipal Court of Rome on or about August of 2002.

17.

Although the City of Rome has attempted to revise the ordinance to comply with constitutional requirements, it has failed to do so.

18.

On July 7, 2003, the City of Rome revised the ordinance to include a new paragraph that reads:

(b) Lawful assemblies and other lawful means of expressing public opinion not in contravention with other laws shall not be deemed to interfere with the use and enjoyment of the recreation facility by other persons.

(Ord. No. 93-7-1, section XXIV, 7-6-93; Ord No. 03-7-2, section I, 7-7-03).

19.

Despite the July 7, 2003 amendment to the ordinance, the ordinance remains unconstitutional based on the language contained in its paragraph (a):

- (a) It shall be unlawful for any person to engage in any activity within a recreation facility that could cause injury to other persons or interfere with the use and enjoyment of the recreation facility by other persons.

(Ord. No. 93-7-1, section XXIV, 7-6-93; Ord. No. 03-7-2, section I, 7-7-03).

20.

Plaintiffs notified the City of Rome that the ordinance remained unconstitutional, despite the amendment, to no avail.

21.

Plaintiffs intend to engage in similar peaceable activity in the future, but fear arrest under Rome City Code section 15-153.

CLAIMS FOR RELIEF

22.

Plaintiffs reallege all the within and foregoing allegations for each and every claim for relief.

23.

Public parks such as Ridge Ferry Park are a traditional public forum.

24.

Rome City Code section 15-153 is an impermissible vague and overbroad restriction on free expression and petition in a traditional public forum, both on its face and as applied, in violation of the First and Fourteenth Amendments of the United States Constitution.

25.

Rome City Code section 15-153 is an impermissible restriction of Plaintiffs' Constitutional rights by a subdivision of the State and thus violates the Privileges and Immunities clause of the Fourteenth Amendment.

26.

Rome City Code section 15-153's overbreadth and vagueness obstructs Plaintiffs' freedom of speech and therefore constitutes a deprivation of liberty without

due process of law in violation of the Due Process clause of the Fourteenth Amendment.

27.

Rome City Code section 15-153, as applied, allows individuals to sell glo-sticks and food items commercially. The freedom of expression is a fundamental right and so strict scrutiny must be applied to survive Equal Protection analysis. Because Defendant's "interest" in controlling the activities of park attendees is not necessary to further any compelling state interest, the Rome City Code section 15-153 as applied to persons engaging in political activity violates the Equal Protection clause of the Fourteenth Amendment.

28.

In passing and enforcing Rome City Code section 15-153, Defendant has under color of law subjected Plaintiffs to a deprivation of rights secured by the U.S. Constitution and thus is liable under 42 U.S.C. section 1983.

29.

Rome City Code section 15-153, both on its face and as applied, violates Plaintiffs' rights to freedom of life, liberty and property; protection to person and

property and equal protection; and freedom of speech under the Georgia Constitution, Art. I, Sec. I, paras. I, II, and V.

PRAYERS FOR RELIEF

WHEREFORE, on the basis of the foregoing, Plaintiffs pray that this Court:

- (1) Issue a declaratory judgment that Defendant's actions, policies and procedures, embodied in ROME CITY CODE section 15-153 as applied to individuals who engage in political activity in city parks, violated Plaintiffs' rights as secured under the free speech clause of the First Amendment of the United States Constitution, the privileges and immunities, due process, and equal protection clauses of the Fourteenth Amendment of the United States Constitution, 42 U.S.C. section 1983 and Article I, Section 1 paragraphs 1 (life, liberty and property), 2 (protection to person and property; equal protection), and 5 (freedom of speech) of the Georgia Constitution;
- (2) Enter a preliminary and permanent injunction against Defendant, its officers, agents, successors, employees, attorneys, and those acting in concert with it, from enforcing ROME CITY CODE section 15-153 with respect to individuals who engage in political activity in city parks and any other protected activity restrained by the code section;

- (3) Order Defendant to issue a public apology to Plaintiffs;
- (4) Grant to Plaintiffs judgment for nominal and compensatory damages against Defendant in an amount reasonable and commensurate with the losses imposed upon him by Defendant's unlawful acts;
- (5) Grant to Plaintiffs a jury trial on all issues so triable;
- (6) Award to Plaintiffs the costs of the action and reasonable attorney's fees as provided by 42 U.S.C. section 1988 and federal and state law;
- (7) Grant any and all additional relief as this Court deems proper and just.

Respectfully submitted this _____ day of May, 2004.

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