

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. _____

THE DANDELION CENTER, INC., a Colorado Not-for-Profit Corporation,

Plaintiff,

v.

TROY A. EID, in his official capacity as Executive Director of the Colorado Department of Personnel and Administration, and in his individual capacity;

COLONEL MARK V. TROSTEL, in his official capacity as Chief of the Colorado State Patrol,

Defendants.

COMPLAINT

INTRODUCTION

1. This lawsuit challenges the constitutionality of a Colorado regulation that prohibits holders of valid permits from engaging in certain constitutionally-protected expression during rallies and demonstrations conducted on the steps of the State Capitol Building. Individuals who engage in the prohibited speech are subject to criminal penalties under Colorado law.

2. Defendant Eid provides the text of the challenged regulation to every individual and organization that obtains a permit to use the State Capitol Building for rallies and demonstrations. The Defendants' threat to enforce the challenged regulation has chilled hundreds of individuals and organizations, including the Plaintiff in this case, from engaging in expression that is fully protected by the First Amendment.

3. Plaintiff files this action pursuant to 42 U.S.C. § 1983 seeking a declaratory judgment that the regulation is unconstitutional; a preliminary and permanent injunction against its enforcement; and damages for past violations of Plaintiff's First Amendment rights caused by the Defendants' threat to enforce the challenged regulation.

JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

5. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

6. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All plaintiffs and defendants reside within the District of Colorado, and the actions and threatened actions occurred here.

PARTIES

7. Plaintiff Dandelion Center, Inc., is a not-for-profit corporation incorporated in the State of Colorado. It is a Denver-based social action group that focuses on human rights and civil liberties issues. Its activities include sponsoring educational forums; producing and distributing literature; sponsoring training on legal and medical issues for participants in public demonstrations; and organizing rallies and demonstrations.

8. Defendant Troy A. Eid is the Executive Director of the Colorado Department of Personnel and Administration. Pursuant to Colorado statute, he is in charge of maintenance, services, and the buildings and grounds of the State Capitol. He oversees and administers the issuance of permits for individuals and organizations who wish to reserve portions of the State

Capitol Building for expressive activity such as rallies and demonstrations. The Department of Personnel and Administration promulgated the regulation that is challenged in this case, and Defendant Eid is responsible for its enforcement. Defendant Eid is sued in his official capacity for declaratory and injunctive relief. He is sued for damages in his individual capacity.

9. Defendant Trostel is the Chief of the Colorado State Patrol. He is sued in his official capacity for declaratory and injunctive relief.

10. At all times relevant to this Complaint, all Defendants were acting under color of state law.

FACTUAL ALLEGATIONS

11. One of the most frequently-used locations for expression of political views, rallies, demonstrations and other forms of political speech in Denver is the State Capitol Building. Every year, Defendant Eid issues hundreds of permits authorizing use of the West steps of the Capitol or other portions of the Capitol grounds for expressive activity.

12. Defendant Eid's agency has promulgated regulations that govern the process of applying for permits and the use of the Capitol Building and grounds. The regulations are titled "State Capitol Buildings Group Grounds Permit Regulations." They are codified in the Colorado Code of Regulations as 1 CCR 107-1.

13. According to the document, "[t]he purpose of these rules is to establish standards for acceptance, processing, review and disposition of permit applications for demonstrations and special events on the State Capitol Buildings Group Grounds."

14. Paragraph 1.436 of the Regulations states as follows: "Solicitation and/or commercial enterprise are not allowed on the State Capitol Buildings Group Grounds." This is the regulation that is challenged as unconstitutional in this lawsuit.

15. Any person who violates the challenged regulation is subject to criminal penalties pursuant to Colorado Revised Statute 18-9-117(1).

16. It is the policy of Defendant Eid and his agency to enforce the challenged regulation. Pursuant to that policy, for example, each applicant who receives a permit receives a copy of the document titled “State Capitol Buildings Group Grounds Permit Regulations,” which includes the challenged regulation.

17. By pursuing a policy of providing a copy of the challenged regulation to every applicant who secures a permit, Defendant Eid has chilled and threatens to continue chilling the First Amendment rights of permit applicants.

18. It is also the policy of Defendant Trostel and the Colorado State Patrol to enforce the challenged regulation. Pursuant to that policy, officers of the Colorado State Patrol have advised sponsors and participants in First Amendment activities that they are forbidden to solicit contributions on the grounds of the State Capitol Building or on the grounds of other state buildings that fall under the jurisdiction of the Colorado State Patrol.

19. The challenged regulation, and the Defendants’ threat to enforce it, has caused Plaintiff to refrain from engaging in constitutionally-protected expression during past events conducted pursuant to valid permits on the State Capitol grounds.

20. For example, on December 14, 2002, Plaintiff sponsored a rally and march to protest plans to go to war in Iraq. The event began in Denver City Park and ended, after a march, with a rally on the west steps of the State Capitol building. Plaintiff obtained valid permits from both the City and County of Denver and from Defendant Eid.

21. When the Dandelion Center obtained the permit from Defendant Eid, it was accompanied by a several-page addendum titled “State Capitol Buildings Group Grounds Permit Regulations.” The addendum contained the text of the regulation challenged in this lawsuit.

22. At its rally on the steps of the State Capitol on December 14, 2002, Plaintiff wanted to ask participants to donate contributions to help offset the cost of organizing, promoting, and conducting the antiwar event. The First Amendment protects the right of the Dandelion Center to make such a request for donations, but the challenged regulation forbids such requests. Plaintiff refrained from exercising its First Amendment right to solicit donations as a direct result of the existence and threat of enforcement of the unconstitutional regulation challenged in this lawsuit.

23. The Dandelion Center holds valid permits to conduct rallies once again on the steps of the State Capitol. These rallies are scheduled for October 10 and 11, 2003.

24. The Dandelion Center once again wants to exercise its First Amendment right to solicit donations at the rallies scheduled for October, 2003, but the challenged regulation, in combination with C.R.S. § 18-9-117(1) makes this exercise of First Amendment rights a crime.

25. The Dandelion Center intends to sponsor or conduct similar rallies at the same location in the future, and it wants to be free to exercise fully its First Amendment rights, including the right to solicit contributions for political causes.

26. In this lawsuit, Plaintiff asserts the First Amendment rights of its directors as well as the rights of the organization. It also asserts the First Amendment rights of other individuals and organizations who have obtained or will obtain permits from Defendant Eid, as well as the First Amendment rights of individuals who are deprived of the opportunity to hear the constitutionally-protected expression that the challenged regulation prohibits.

DECLARATORY RELIEF

27. An actual and immediate controversy exists between Plaintiff and the Defendants.

28. Defendants take the position that the challenged regulation is valid and constitutional. Plaintiff believes that the regulation violates the First Amendment.

29. In requesting this declaratory relief, Plaintiff requests an interpretation of the rights, legal status and relationships of the parties under the law and facts.

INJUNCTIVE RELIEF

30. The Defendants have acted and are threatening to continue acting under color of state law to deprive Plaintiff of its constitutional rights. Plaintiff faces a real and immediate threat of irreparable injury as a result of the actions and threatened actions of the Defendants and the existence, operation, and threat of enforcement of the challenged regulation.

31. Plaintiff has no plain, adequate or speedy remedy at law.

FIRST CLAIM FOR RELIEF **(42 U.S.C. § 1983; First Amendment)**

32. The allegations of paragraphs 1-30 are incorporated by reference as though fully set forth herein.

33. The First Amendment protects the rights of individuals and organizations to solicit funds to promote their message.

34. By prohibiting solicitation of funds during expressive activities, the challenged regulation prohibits speech that is protected by the First Amendment.

35. The challenged regulation is unconstitutional both on its face and as applied to the expression of the Plaintiff.

36. Because of the challenged regulation and Defendants' credible threat of enforcement, Plaintiff has refrained from engaging in constitutionally-protected expression.

37. Without intervention from this Court, Plaintiff and its directors will be forced to choose at future rallies whether to forego their constitutional rights or violate the regulation and risk criminal penalties.

38. Wherefore, Plaintiff requests damages for the past violation of its First Amendment rights, as well as a declaratory judgment, a preliminary and permanent injunction, and attorney's fees.

Plaintiff hereby demands a trial by a jury of six.

Dated September 18, 2003

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