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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIVISION

ELLYN BURNES,
3 1/2 Ohio Avenue
Athens, Ohio 45701

And

FLORENCE BEIDLER
105 Nolan Circle
Marietta, Ohio 45750

Plaintiffs,

-v-

WASHINGTON COUNTY FAIR BOARD
922 Front Street
Marietta, Ohio 45750

And

STEVE TORNES, PRESIDENT,
WASHINGTON COUNTY FAIR BOARD
922 Front Street
Marietta, Ohio 45750

Defendants.

CASE NO: **2 : 0 8 cv 3 2 9**

JUDGE **JUDGE GRAHAM**

MAGISTRATE JUDGE KING

COMPLAINT FOR DECLARATORY &
INJUNCTIVE RELIEF, RESTITUTION,
ATTORNEY FEES AND COSTS

INTRODUCTION

1. This is an action for declaratory relief, preliminary and permanent injunctive relief, and damages against Defendants Washington County Fair Board ("Fair Board") and Steve Tornes, President ("Mr. Tornes") who have unconstitutionally prohibited plaintiffs Elyln Burnes and Florence Beidler ("Plaintiffs") from marching in the 2007 Labor Day Parade. The Plaintiffs are members of "Neighbors for Clean Air" ("Neighbors for Clean Air" or "the group"), a Marietta, Ohio, citizens group that is

committed to reducing air and water pollution by the nearby manganese refinery owned by Eramet SA, a French mining and metallurgical company ("ERAMET"). The ERAMET plant, one of the largest manganese refineries in the United States, is believed by Neighbors for Clean Air to pose serious health risks to the residents of Marietta, creating airborne manganese levels that are significantly higher than those permitted under federal regulatory standards.

2. Neighbors for Clean Air have organized for expressive purposes to educate citizens and public officials in the Marietta area about the potential dangers posed by the ERAMET plant. Neighbors for Clean Air advocate that the ERAMET plant be retrofitted to discontinue harmful air and water pollution. In March of 2006, the group began its "Good Neighbor Campaign," the goals of which were to educate fellow citizens about pollution in their community, to work with ERAMET management to reduce pollution from the plant, and to improve communication between ERAMET and its neighbors. A copy of the "Good Neighbor Campaign" Citizens' Audit (June 1, 2006) is attached hereto as Exhibit A. As part of the Good Neighbor Campaign, the group commended ERAMET for the initial steps it had taken to reduce emissions in Marietta. The group also sought further information from ERAMET about emissions and began a program of air-monitoring studies to identify the source and nature of noxious odors commonly known in the area as "the ERAMET stink." All of the expression communicated by Neighbors for Clean Air in the past, or contemplated in the future, is "core" political speech, squarely protected by the First Amendment to the U.S. Constitution.

JURISDICTION

3. This action is brought pursuant to 42 U.S.C. § 1983 and U.S. Const. Amendments I and XIV. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343. Plaintiffs' claim for declaratory relief exists under 28 U.S.C. §§ 2201 and 2202.

PARTIES

4. Ellyn Burnes is a citizen, taxpayer, and resident of Athens County, Ohio. She is also a member of Neighbors for Clean Air who was denied the right to participate in the 2007 Labor Day Parade.

5. Florence Beidler is a citizen, taxpayer, and resident of Washington County, Ohio. She is also a member of Neighbors for Clean Air who was denied the right to participate in the 2007 Labor Day Parade.

6. On information and belief, the Plaintiffs assert that the Fair Board is a duly authorized Fair Board in the State of Ohio, whose duties include conducting an annual Labor Day Parade in Washington County, Ohio. The Fair Board performs an official governmental function by organizing and overseeing Washington County's Labor Day parade, and by its other activities which include official oversight of the Washington County Fair. The Fair Board is also a state actor by virtue of its entanglement with Washington County, on whose behalf the Board acts by administering admission to and camping at the Washington County Fair Grounds, as well as by determining who may march in the annual Labor Day Parade.

7. At all times relevant to this action, Mr. Tornes was the President of the Washington County Fair Board. He also was an employee of ERAMET. He is being sued in his official capacity only. The Fair Board and Mr. Tornes are collectively referred to as Defendants.

8. At all times relevant to this action, Defendants acted under color of state law within the meaning of 42 U.S.C. § 1983.

ALLEGATIONS

9. In July, 2007, Plaintiffs, and other members of the "Neighbors for Clean Air," were granted permission from the Fair Board to march in the annual Washington County Labor Day Parade. The members of the group were told by Ms. Zimmer, a representative of the Fair Board, that anyone was welcome to march in the parade, and to just "show up."

10. In preparation for the parade, Plaintiffs had t-shirts printed that stated: "Eramet, let's clear the air." The design of the t-shirts is set forth below:



Plaintiffs also had a banner made that stated: "Neighbors for Clean Air." They intended to march peacefully in the parade with the banner, clothed in the t-shirts, and to pass out educational literature, in order to convey to parade onlookers their message that the ERAMET refinery should be persuaded to take steps to limit pollution in Washington County. At no time did Plaintiffs indicate any desire to convey their message in a disruptive or offensive manner, a fact underscored by the collaborative admonition on the Plaintiffs' t-shirts, "Let's clear the air!"

11. On or about August 31, 2007, at approximately 9:45 p.m., Ms. Zimmer, informed a member of Neighbors for Clean Air that the group was no longer allowed to participate in the parade, which was to take place on September 1, 2007. The group was told that the Fair Board had unanimously decided to rescind permission for Neighbors for Clean Air to march in the parade the next day.

12. Despite the Board's last-minute decision to exclude them, the Plaintiffs appeared at the site of the parade wearing their t-shirts and carrying their banner. The Defendants prevented the Plaintiffs from marching on the day of the parade. The Plaintiffs refused to give up their constitutional right to free expression as a condition to marching in the parade.

13. The Defendants' decision to prevent Plaintiffs from marching in the parade was based on hostility toward the message that the Plaintiffs sought to communicate by marching in the parade.

14. Although the Defendants excluded the Plaintiffs from marching in the parade, they allowed approximately 50 different groups to march and express a variety of messages. The groups that were permitted to march included a group expressing support for ERAMET, groups representing the Democratic and Republican parties, an individual displaying anti-abortion messages on his vehicle, as well as fire trucks, cheerleaders, politicians, and a number of local businesses.

15. The Defendants' decision to exclude the Plaintiffs from the parade was not made pursuant to any formal or written policy, criteria, or standards. The Defendants had untrammelled discretion to exclude marchers from the Labor Day parade and exercised this discretion to prevent the Plaintiffs from participating in the parade and to stop the Plaintiffs' speech before it could occur.

16. Plaintiffs sought to mitigate the Defendants' damage to their constitutional rights by walking on the sidewalk along the parade route, peacefully distributing literature. Nevertheless, the decision of the Defendants to ostracize the Plaintiffs from

one of the most significant annual community events in Washington County significantly undermined the Plaintiffs' ability to communicate their message, and to associate with those marching in and viewing the Labor Day parade.

17. Plaintiffs suffered loss of good will, damages to their reputations, monetary damages, and were stigmatized in the community as the result of the Defendants' decision to exclude them from the Washington County Labor Day Parade.

18. Notwithstanding the Defendants' denial of the Plaintiffs First Amendment rights in 2007, the Plaintiffs desire and intend to march in the Washington County Labor Day parade in 2008, and in future years, to advocate to their neighbors their views about clean air and ERAMET. The Plaintiffs also desire and intend to participate in other events at the Washington County Fairgrounds in 2008, and in future years, to express their views about clean air and ERAMET.

19. Defendants continue to assert that they have the authority, as organizers of the Washington County Fair, to exclude from the annual Labor Day parade any groups whose message they disagree with or disapprove. A 2007 newspaper article that appeared in *The Marietta Register*, stated that "[a]ccording to Mr. Tornes and the legal advisors of the Fair Board they would be well within their rights to force out ANY groups they found potentially objectionable—be they liberal or conservative, white or black, corporate or grass roots." As a result of the Defendants' continuing unconstitutional conduct, the Plaintiffs are likely to suffer injury to injury to their constitutional rights in the future.

COUNT ONE (Declaratory Relief)

20. The Plaintiffs incorporate by reference all of the foregoing paragraphs as if fully set forth herein.

21. Defendants violated the Plaintiffs' rights to free expression under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983, by their actions including, but not limited, to the following:

- a. Refusing to permit Plaintiffs to march in the parade with their t-shirts;
- b. Refusing to permit Plaintiffs to march in the parade with their banner;
- c. Refusing to permit Plaintiffs to march in the parade based upon the content of their message.

22. Defendants violated the Plaintiffs' rights to equal protection of the law under the Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983, by their actions including, but not limited, to the following:

- a. Refusing to permit Plaintiffs to march in the parade with their t-shirts, while opening the parade to others in the community who sought to convey messages different from the Plaintiffs' message;
- b. Refusing to permit Plaintiffs to march in the parade with their banner, while allowing others in the community to march in the parade bearing banners displaying messages different from the Plaintiffs' message;
- c. Refusing to permit Plaintiffs to march in the parade based upon the content of their message, while allowing others in the community to express a different message while marching in the parade.

23. Declaratory relief from this Court will resolve these controversies and limit the uncertainties created by the Defendants' unconstitutional denial of Plaintiffs rights secured by the First and Fourteenth Amendments to the United States Constitution.

24. As alleged herein, a real, substantial and immediate controversy is presented regarding the rights, duties, and obligations of the parties. Plaintiffs therefore request declaratory judgment from this Court pursuant to Rule 57 of the Federal Rules of Civil Procedure that Defendants through their actions excluding the Plaintiffs from the 2007 Washington County Labor Day Parade violated Plaintiffs' rights guaranteed under the First and Fourteenth Amendments to the United States Constitution.

COUNT TWO (Injunctive Relief)

25. The Plaintiffs incorporate by reference all of the foregoing paragraphs as if fully set forth herein.

26. The Plaintiffs will be irreparably harmed by Defendants' actions preventing Plaintiffs from marching in future parades or participating in other Washington County events administered by Defendants on account of Defendants' disapproval of Plaintiffs' lawful message.

27. The Plaintiffs thus seeks preliminary and permanent injunctive relief (1) enjoining the Defendant from excluding Plaintiffs from marching in future parades; and (2) enjoining the Defendants from denying Plaintiffs permission to participate in future Washington County events administered by Defendants.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. Judgment declaring that the Defendants' actions were unconstitutional in violation of the First and Fourteenth Amendments of the U.S. Constitution;

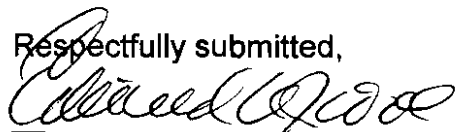
B. An order granting both a preliminary and permanent injunction to enjoin Defendants from refusing to permit Plaintiffs the right to march in the 2008 Washington County Labor Day parade, and any other future parades or events the Defendants oversee, based on the content of the Plaintiffs' speech or in retaliation for the exercise of their constitutional rights;

C. An order awarding Plaintiffs compensation for the damages they have suffered as a result of the Defendants' interference with the Plaintiffs' exercise of their rights of speech and association;

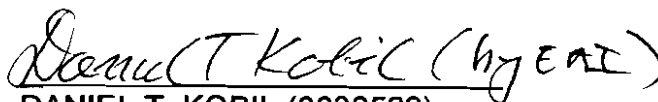
D. An order awarding costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Any and all additional relief that the Court deems just and necessary.

Respectfully submitted,



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