

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

Traditionalist American Knights of the	)	
Ku Klux Klan, an unincorporated	)	
association, and	)	
	)	
Frank Ancona,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:12-cv-151
	)	
City of Cape Girardeau, Missouri,	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE  
RELIEF, AND NOMINAL DAMAGES PURSUANT TO 42 U.S.C. § 1983**

Plaintiffs, for their Complaint against Defendant, state as follows:

**INTRODUCTION**

1. Plaintiffs, an association and one of its members, aim to spread their message widely.
  
2. One effective and efficient way Plaintiffs have found to spread their message is by distributing handbills on the windshields of vehicles parked on public streets. They have done so throughout the country and in Missouri, including in the City of Park Hills, the City of Desloge, the City of Farmington, and the City of Leadwood.
  
3. Frank Ancona and other members of the Traditionalist American Knights of the Ku Klux Klan plan to distribute handbills in the City of Cape Girardeau, Missouri, on September 28, 2012, and on future dates not yet determined.

4. In preparation for the September 28, 2012, activity, Plaintiffs have learned that the City of Cape Girardeau maintains an ordinance, Code of Ordinances § 22-82, which criminalizes their planned expressive conduct. Section 22-82 mandates that, “No person shall throw or deposit any handbill in or upon any vehicle; provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute a handbill to any occupant of a vehicle who is willing to accept it.”

5. In light of *Krantz v. City of Fort Smith*, 160 F.3d 1214 (8th Cir. 1998), Ancona contacted the Cape Girardeau Police Department to inquire whether § 22-82 would be enforced. He was advised by the office of the Chief of Police and by the Special Operations Commander that the ordinance would be enforced as written.

6. As a result of the ordinance and the assertions by police officials that it will be enforced, Plaintiffs reasonably fear Ancona and other members will be arrested if they spread their messages by placing handbills on parked cars.

7. Section 22-82 impermissibly infringes upon Plaintiffs’ rights as set forth in the Free Speech Clause of the First Amendment to the Constitution of the United States and incorporated to the states and their municipalities by the Fourteenth Amendment.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 over Plaintiffs’ claims of a deprivation of a right, privilege, or immunity secured by the Constitution under color of state law.

9. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiffs’ civil action arising under the Constitution of the United States.

10. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.

11. In addition, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over Plaintiffs' cause of action arising under the Constitution of the State of Missouri.

12. Venue lies in the United States District Court for the Eastern District of Missouri because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the County of Cape Girardeau, Missouri. 28 U.S.C. § 1391(b)(2).

13. Divisional venue is in the Southeastern Division because the events leading to the claim for relief arose in the County of Cape Girardeau and the single Defendant is located in the County of Cape Girardeau. E.D.MO. L.R. 2.07(A)(3), (B)(1).

### **PARTIES**

14. Plaintiff Traditionalist American Knights of the Ku Klux Klan ("TAK"), is an unincorporated association of individuals. TAK describes itself as "a White Patriotic Christian organization that bases its roots back to the Ku Klux Klan of the early 20th century." According to TAK, it is "a non-violent organization that believes in the preservation of the White race and the United States Constitution as it was originally written and will stand to protect those rights against all foreign invaders." TAK brings this action on behalf of its members, including Ancona, who participate in the distribution of leaflets.

15. Plaintiff Ancona is a resident of the State of Missouri. He is the Imperial Wizard of TAK.

16. Defendant, the City of Cape Girardeau, Missouri, is a municipal corporation.

### **ORDINANCE AT ISSUE**

17. Section 22-82 was enacted by the City of Cape Girardeau and appeared as § 16A-12 in the 1967 version of the City's Code of Ordinances.

18. The article within which § 22-82 appears is "known and may be cited as the Cape Girardeau Anti-Litter Ordinance." Code of Ordinances, § 22-71.

19. Section 22-82 is entitled "Placing handbills on or in vehicles."

20. Section 22-82 reads:

No person shall throw or deposit any handbill in or upon any vehicle; provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute a handbill to any occupant of a vehicle who is willing to accept it.

21. According to the Code,  
[a]ny person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined an amount not exceeding five hundred dollars (\$500.00) or be imprisoned in the city jail for a period not exceeding three (3) months or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Code of Ordinances § 22-72.

22. An officer of the City of Cape Girardeau's police department "may arrest on view, and without a warrant, any person the officer sees violating or who such officer has reasonable grounds to believe ... has violated any ordinance over which such officer has jurisdiction." MO. REV. STAT. § 544.216.

23. In enacting § 22-82 and in creating and overseeing a police department charged with enforcement of § 22-82, the City of Cape Girardeau acts under color of state law.

### **FACTUAL ALLEGATIONS**

24. Plaintiffs have regularly used the placement of handbills on cars parked on public streets as a way of spreading their messages.

25. Plaintiffs' messages include that for our Nation to remain successful, white supremacy and the purity of the white blood must be maintained. They also believe that advancement of Sharia law, the promotion of immoral public figures, and widespread use of illegal drugs are undermining society.

26. Plaintiffs desire and plan to express and spread their messages in the future by placing handbills on vehicles parked in the City of Cape Girardeau.

27. In particular, Plaintiffs have selected September 28, 2012, as one date for the distribution of handbills within Cape Girardeau.

28. Ancona and other members of TAK plan to participate in the distribution of handbills within Cape Girardeau on September 28, 2012, and in dates in the future.

29. In anticipation of the September 28, 2012, distribution, Ancona contacted the office of the Chief of Police for the City of Cape Girardeau's police department on or

about August 29, 2012. On that date, Ancona was informed by the administrative assistant to the Chief that § 22-82 would be enforced as written. Ancona also left a message with the department's special operations commander.

30. The next day, Ancona received a return call from a Lieutenant within the police department. The phone call was courteous, but the Lieutenant reiterated that the police would enforce § 22-82, which would prohibit Ancona and other TAK members from their planned flier distribution.

31. When Ancona shared his understanding that restrictions like § 22-82 are unconstitutional, the Lieutenant informed him that he enforces the laws as written and that no one had tested the constitutionality of Cape Girardeau's ordinance.

32. Because of § 22-82, Ancona and other members of TAK reasonably fear that they will be arrested, fined, and imprisoned for violating § 22-82 if they distribute handbills as planned.

33. The spreading of Plaintiffs' messages by placing handbills on parked vehicles is an efficient and cost-effective method of reaching a large number of persons living in, or found in, an area in a short period of time for which no comparative alternative exists.

34. Section 22-82 suppresses considerably more speech than is necessary to serve any significant government interest.

35. Plaintiffs are harmed by the violation of their constitutional rights caused by § 22-82's chilling effect on their protected expressive conduct.

## COUNT I

*Cape Girardeau Code of Ordinances § 22-82 is  
Unconstitutional under the Free Speech Clause of the First Amendment*

36. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

37. Section 22-82 is not narrowly tailored to achieve any significant government interest.

38. In addition or in the alternative, § 22-82 fails to leave open ample alternatives for Plaintiffs' speech.

## COUNT II

*Cape Girardeau Code of Ordinances § 22-82 Violates the  
Free Speech Guarantee of Article I, § 8 of the Constitution of the State of Missouri*

39. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

40. Section 22-82 impermissibly infringes on free speech rights guaranteed by the Constitution of the State of Missouri.

WHEREFORE Plaintiffs pray this Court:

- A. Enter declaratory judgment pursuant to 42 U.S.C. § 1983 finding Cape Girardeau Code of Ordinances § 22-82 unconstitutional;
- B. Issue preliminary and permanent injunctions and, if necessary, a temporary restraining order enjoining enforcement of § 22-82;
- C. Award Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and

D. Allow such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,

/s/ Anthony E. Rothert  
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Attorneys for Plaintiffs



**Verification**

I have studied the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ Frank Ancona  
Frank Ancona