

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

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|---|---|-----|
| Frank L Snider, III, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. |
| |) | |
| City of Cape Girardeau, Missouri, and |) | |
| |) | |
| Matthew Peters, individually and in his |) | |
| official capacity as a police officer, |) | |
| |) | |
| Defendants. |) | |

COMPLAINT

1. This is a complaint for declaratory judgment, injunctive relief, and nominal and punitive damages for claims arising from the October 23, 2009 arrest of Plaintiff Frank L. Snider, III, (hereinafter "Plaintiff") for the alleged offense of purposely and publicly desecrating the Flag of the United States in violation of Mo. Rev. Stat. § 578.095. Plaintiff alleges that Defendant Matthew Peters (hereinafter "Defendant Peters") violated his clearly established rights under the First and Fourteenth Amendments by arresting him for mutilating or desecrating the Flag for expressive purposes. He further alleges that Defendant City of Cape Girardeau, Missouri (hereinafter "City of Cape Girardeau"), failed to provide constitutionally adequate training and supervision to its police officers, which resulted in Plaintiff's arrest.

2. Plaintiff further alleges that Mo. Rev. Stat. § 578.095 is unconstitutional as applied to expressive conduct under the First and Fourteenth Amendments.

JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the federal constitution. This Court has original jurisdiction pursuant to 28 U.S.C § 1331 and § 1343.

4. The relevant acts and omissions occurred in Cape Girardeau County, Missouri; therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

5. Divisional venue is in the Southeastern Division because defendants are, and at all times related to this incident were, located in Cape Girardeau County, Missouri.

PARTIES

6. Plaintiff is a resident and citizen of the United States of America and the State of Missouri residing in Cape Girardeau County, Missouri.

7. Defendant Peters was at all times relevant to this complaint duly appointed and acting as an officer of the police department of the City of Cape Girardeau and acting under color of law, including under color of statutes of the State of Missouri and the ordinances, regulations, policies, customs, and usages of the City of Cape Girardeau.

8. City of Cape Girardeau is a municipal corporation and the public employer of Defendant Peters.

FACTS

9. On October 20, 2009, Plaintiff was upset with the government of the United States, particularly the Social Security Administration. The basis for Plaintiff's dissatisfaction was a denial of disability benefits, which denial Plaintiff believes to be unjust.

10. To express his disagreement with the government, Plaintiff took to his front yard and attempted to burn a United States Flag. When the attempt to light the Flag was unsuccessful, Plaintiff instead expressed his message by shredding the Flag with a knife and throwing it to the ground.

11. A neighbor called the police to complain.

12. Defendant Peters responded to the scene, picked the Flag up from the ground, and questioned Plaintiff about the Flag.

13. Plaintiff explained to Defendant Peters that he had torn the Flag and thrown it to the ground after being unsuccessful in burning it. He further explained that his purpose in doing so was to express his anger at the United States and its interference in his efforts to obtain employment.

14. On October 23, 2009, Plaintiff was arrested on a charge of desecrating the flag in violation of Mo. Rev. Stat. § 578.095 based on the events of October 20, 2009.

15. Section 578.095 was enacted in 1980. It is titled, “Desecration of flag—penalty.” Mo. Rev. Stat. § 578.095. The statute provides, “Any person who purposefully and publicly mutilates, defaces, defiles, tramples upon or otherwise desecrates the national flag of the United States or the state flag of the state of Missouri is guilty of the crime of flag desecration.” *Id.*

16. In Missouri, “National flag desecration is a class A misdemeanor.” *Id.*

17. In Missouri, a class A misdemeanor is punishable by up to a year imprisonment, a \$1,000.00 fine, or both. R.S.Mo. § 558.011.1(5), § 560.016.1(1).

18. Almost immediately upon Plaintiff’s arrest the police department of the City of Cape Girardeau issued a press release trumpeting Plaintiff’s arrest for desecrating a Flag.

19. As the direct and proximate result of the actions and inactions of Defendants, Plaintiff suffered the following injuries and damages:

- A. Unlawful deprivation of his liberty and
- B. Violation of his constitutional rights under the First Amendment to be free from arrest for constitutionally protected acts of expression.

20. Defendants' conduct was motivated by evil motive or intent or, in the alternative, involved reckless or callous indifference to Plaintiff's federally protected rights.

COUNT I

42 U.S.C. § 1983 Against Defendant Peters

21. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth here.

22. Plaintiff claims nominal and punitive damages for the injuries set forth above under 42 U.S.C. § 1983 against Defendant Peters for violation of his constitutional rights under color of law.

COUNT II

42 U.S.C. § 1983 Against City of Cape Girardeau

23. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth here.

24. Prior to October 24, 2009, the City of Cape Girardeau developed and maintained policies or customs exhibiting deliberate indifference to the constitutional freedom of speech and expression rights of persons in Cape Girardeau, which caused the violation of Plaintiff's rights.

25. It was the policy, custom, or both of the City of Cape Girardeau to inadequately supervise and train its police officers, including Defendant Peters, about constitutional rights to freedom of speech and expression, thereby failing to prevent the constitutional violation against Plaintiff. The City of Cape Girardeau did not require appropriate training, in-service training, or re-training of officers to provide them an adequate understanding of persons' rights under the First and Fourteenth Amendments. The City of Cape Girardeau did not provide adequate supervision to prevent the arrest of individuals for exercising their clearly established First Amendment rights.

26. The above-described policies and customs demonstrate a deliberate indifference on the part of policymakers of the City of Cape Girardeau to the constitutional rights of persons within the City of Cape Girardeau and were the cause of the violation of Plaintiff's rights alleged herein.

27. Plaintiff claims nominal and punitive damages for the injuries set forth above under 42 U.S.C. § 1983 against Defendant City of Cape Girardeau for violation of his constitutional rights under color of law.

COUNT III

Declaratory Judgment

27. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth here.

28. Mo. Rev. Stat. § 578.095 violates the First Amendment, as incorporated to the states and their municipalities by the Fourteenth Amendment.

29. Mo. Rev. Stat. § 578.095 on its face and as applied is a content-based restriction on speech that is not related to furtherance of a compelling governmental interest.

30. Mo. Rev. Stat. § 578.095 on its face and as applied is an invalid time, place, and manner restriction on expressive conduct.

31. Mo. Rev. Stat. § 578.095 on its face and as applied is substantially overbroad.

WHEREFORE Plaintiff respectfully requests this Court:

- A. Enter judgment in favor of Plaintiff against Defendants;
- B. Enter a declaratory judgment that Mo. Rev. Stat. § 578.095 is unconstitutional and that City of Cape Girardeau fails to provide adequate training and supervision of its police officers regarding the right to free speech and expression;
- C. Upon proper motion issue a preliminary and permanent injunction enjoining Defendants from enforcing or threatening to enforce Mo. Rev. Stat. § 578.095 and requiring the City of Cape Girardeau to develop and implement adequate training programs for its police officers about the right of free speech and expression;
- D. Award Plaintiff nominal and punitive damages against Defendants;
- E. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- F. Allow to Plaintiff such other relief as is just.