

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

Michael Moore,)
)
Kelly Owens,)
)
Anita Keely,)
)
DeAndre Tyler,)
)
Stefene Russell,)
)
Bobby L. Williams,)
)
Walter Winston, and)
)
Mark Ogier,)
)
Plaintiffs,)
)
v.)
)
City of St. Louis, Missouri,)
)
St. Louis Board of Police)
Commissioners,)
)
Todd Epsten, in his official capacity)
as a member of the St. Louis)
Board of Police)
Commissioners,)
)
Bettye Battle-Turner, in her official)
capacity as a member of the)
St. Louis Board of Police)
Commissioners,)
)
Vincent Bommarito, in his official)
capacity as a member of the)
St. Louis Board of Police)
Commissioners,)

No. 4:09-cv-2053

Julius Hunter, in his official capacity)
as a member of the St. Louis)
Board of Police)
Commissioners, and)
)
Francis Slay, in his official capacity)
as ex-officio member of the)
St. Louis Board of Police)
Commissioners,)
)
Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

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

1. Plaintiffs are individuals associated with the campaign committee known as Committee for More Responsible St. Louis City Government and have been, and are, active in other political movements within the City of St. Louis. Plaintiffs are concerned about the plight of neighborhoods in North St. Louis City and of the residents of those neighborhoods. In Plaintiffs' view, the policies of the St. Louis City government, including the use of eminent domain, have worsened the living conditions for certain residents of the City of St. Louis. Most recently Plaintiffs have been alarmed by their perception that the City of St. Louis is acting together with a particular developer to the detriment of residents who do not have an effective voice in St. Louis City government.

2. From on or about November 10, 2009 through on or about December 10, 2009, Plaintiffs were involved in an effort to gather sufficient signatures on petitions to force a referendum on a St. Louis City ordinance providing about \$400 million in tax-backed financing for a particular redevelopment plan. Proponents of the referendum were required to gather approximately 4,400 signatures of registered voters in a thirty-day period. In furtherance of this effort, Plaintiffs aimed to spread their message widely

to persons who live in or are found in certain areas. One effective and efficient way Plaintiffs found to spread their message was by distributing handbills on the windshields of vehicles parked on city streets.

3. Plaintiffs recently became aware of § 11.18.180 of the St. Louis City Revised Code (hereinafter “§ 11.18.180”), which purports to make it illegal to “deposit any commercial or noncommercial handbill in or upon any vehicle without the owner’s consent.” As a result of the ordinance and the recent arrest of another referendum proponent while distributing the proponents’ handbills by placing them on vehicles parked on city streets, Plaintiffs reasonably fear they will be arrested for continuing to spread their political messages by placing handbills on parked cars.

4. Plaintiffs contend that § 11.18.180 impermissibly infringes upon their free speech rights as set forth in the First Amendment to the Constitution of the United States and incorporated to the states and their municipalities by the Fourteenth Amendment.

5. This action seeks entry of declaratory judgment finding that § 11.18.180 is unconstitutional as well as preliminary and permanent injunctions prohibiting the enforcement of the ordinance.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this cause pursuant to 28 U.S.C. §§ 1331 and 1343 and over Plaintiffs’ cause of action arising under the Constitution of the United States pursuant to 42 U.S.C. § 1983.

7. 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 City of St. Louis, Missouri. 28 U.S.C. § 1391(b)(2).

8. Divisional venue is in the Eastern Division because the events leading to the claim for relief arose in the City of St. Louis, Missouri. E.D.Mo.L.R.

2.07(A)(1),(B)(1).

PARTIES

9. Plaintiff Michael Moore is a resident of the State of Missouri.
10. Plaintiff Kelly Owens is a resident of the State of Missouri.
11. Plaintiff Anita Keely is a resident of the State of Missouri.
12. Plaintiff DeAndre Tyler is a resident of the State of Missouri.
13. Plaintiff Stefene Russell is a resident of the State of Missouri.
14. Plaintiff Bobby L. Williams is a resident of the State of Missouri.
15. Plaintiff Walter Winston is a resident of the State of Missouri.
16. Plaintiff Mark Ogier is a resident of the State of Missouri.
17. Defendant City of St. Louis, Missouri, is a municipality and political subdivision of the State of Missouri.
18. Defendant St. Louis Board of Police Commissioners is charged with overseeing the activities of the St. Louis Metropolitan Police Department, which in turn enforces City of St. Louis ordinances and makes arrests for violations of City of St. Louis ordinances. The Board of Police Commissioners is the head of the Police Department and establishes policy for the Department.
19. Defendants Todd Epsten, Bettye Battle-Turner, Vincent Bommarito, Julius Hunter, and Francis Slay are the individual members of the St. Louis Board of Police Commissioners and are named solely in their official capacities as such.
20. All actions to enforce § 11.18.180 are taken under color of law.

ORDINANCE AT ISSUE

21. Section 11.18.180 was enacted by the adoption of Ordinance No. 56726 in 1974.

22. Section 11.18.180 is entitled “Handbill distribution—Vehicles.”

23. Section 11.18.180 reads:

No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle without the owner’s consent. Provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

24. It is the duty of police officers to enforce § 11.18.180. They may do so by, in their discretion, arresting or issuing a summons to a person alleged to have violated the ordinance. §11.18.22 St. Louis City Revised Code.

25. Any person who participates in a violation of § 11.18.180 “shall be guilty of a misdemeanor and upon the conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$5.00) [*sic*] and not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days or both such fine and imprisonment[.]” § 11.18.240(B) St. Louis City Revised Code.

FACTUAL ALLEGATIONS

26. Each Plaintiff has expressed and spread his or her political message by placing handbills on vehicles parked in the City of St. Louis.

27. Each Plaintiff desires and plans to express and spread his or her political message in the future by placing handbills on vehicles parked in the City of St. Louis.

28. Each Plaintiff reasonably fears that he or she will be arrested and prosecuted for violations of § 11.18.180.

29. Because of § 11.18.180, each Plaintiff reasonably fears that he or she will be guilty of a misdemeanor and be fined, imprisoned, or both, when he or she continues to place handbills on parked vehicles within the City of St. Louis.

30. The spreading of a political message 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.

31. Section 11.18.180 suppresses considerably more speech than is necessary to service any significant government interest.

COUNT I

Declaratory Judgment that § 11.18.180 is Unconstitutional Under the Free Speech Provisions of the First Amendment

32. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs as though fully set forth here.

33. Section 11.18.180 is not narrowly tailored to achieve any significant government interest.

34. In addition or in the alternative, § 11.18.180 fails to leave open ample alternatives for Plaintiffs' speech.

WHEREFORE Plaintiffs pray this Court:

A. Enter declaratory judgment in their favor against Defendants finding § 11.18.180 of the St. Louis City Revised Code is unconstitutional;

B. Upon proper motion or request, issue preliminary and permanent injunctions enjoining enforcement of § 11.18.180 of the St. Louis City Revised Code by any Defendant or any officer, agent, servant, employee, attorney of any Defendant and by all persons acting in concert with them or in connection with them;

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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