

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PITTSBURGH ORGANIZING GROUP,)
MICHAEL BUTLER, DE'ANNA CALIGIURI,)
PATRICK YOUNG, MARIE SKOCZYLAS and)
DAVID MEIERAN)

Plaintiffs,)

vs.)

Civil Action No.)

CITY OF PITTSBURGH,)
PITTSBURGH BUREAU OF POLICE,)
CHIEF NATHAN HARPER, and)
COMMANDER KATHY DEGLER)

Defendants.)

VERIFIED COMPLAINT

AND NOW Come Plaintiffs, through their undersigned counsel, and respectfully bring this Complaint to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution and in support thereof aver as follows:

Introduction

1. Plaintiffs in this First Amendment, free-speech lawsuit are anti-war activists in the midst of a one-month vigil on a public sidewalk in Pittsburgh's Oakland neighborhood protesting against America's involvement in Iraq. Plaintiffs' protest involves a stationary picket and leafleting. Plaintiffs have arranged themselves on an approximately five-by-fifteen-foot (5' x 15') rectangle of the sidewalk, being careful not to block either the entire sidewalk or to obstruct passage into and out of nearby storefronts. Indeed, protesters are careful to leave at least a five-foot-wide (5') passage on the sidewalk so as not to obstruct pedestrian movement.

2. Despite the protesters' care to avoid any actual obstruction, Defendant City of Pittsburgh police officers have for the past two weeks issued citations and threatened to arrest Plaintiffs and other protesters under Pennsylvania's obstruction of highways statute, 18 Pa.C.S. § 5507. The citations and threats of arrest have all been leveled against protesters who are either sitting or laying down on the sidewalk, and the police have advised the protesters that they may not do either, even if they are careful not to obstruct passage.

3. The City has no legal authority to prevent Plaintiffs and other protesters from sitting or laying down on the sidewalk as part of a political protest, so long as the participants do not completely block pedestrian passage. The City has no ordinance prohibiting the non-obstructive sitting or laying down on a public sidewalk. The sanctions and threat thereof are based on City police officers' misunderstanding and misapplication of § 5507. Under that statute, however, conduct is illegal only if the City can prove that Plaintiffs "intentionally or recklessly obstruct" the sidewalk and "render [it] impassable without unreasonable inconvenience or hazard." Simply sitting or lying down, without rendering the sidewalk "impassable," is not a crime.

4. Without legal authority or significant justification to harass, sanction and threaten to arrest Plaintiffs and other protesters simply because they may chose to sit or lie on the sidewalk in the course of their non-violent, non-obstructive, constitutionally-protected protest violates the First Amendment. Plaintiffs seek declaratory and injunctive relief, preliminary and permanent thereafter, to enjoin Defendants from interfering with the protests simply because one or more protesters may sit or lay on the sidewalk. Nothing in the requested injunction would interfere with police officers' authority to prevent intentional and complete obstruction of the sidewalk, or to take any other measures reasonably necessary to protect public safety.

Jurisdiction and Venue

5. This lawsuit seeks to vindicate rights protected by the First Amendment to the United States Constitution, as applied to local government by the Constitution's Fourteenth Amendment, and is brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) and §§ 1343(a)(3) and (4). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found to be necessary and proper. This Court also has supplemental and pendent jurisdiction under 28 U.S.C. §1367(a) to adjudicate the state constitutional claim.

6. Venue is proper in this Court because all parties to this action reside, and are located, in this district and all relevant facts to this action occurred in this District. 28 U.S.C. § 1391.

Parties

7. Plaintiff Pittsburgh Organizing Group ("POG") is an unincorporated association with a mailing address of 5125 Penn Avenue, Pittsburgh, Pennsylvania, 15224. POG seeks to affect social change through protests, marches and leafleting.

8. Plaintiff Michael Butler is, and at all relevant times has been, a resident of Pittsburgh, Pennsylvania. Plaintiff Butler is a member of POG.

9. Plaintiff De'Anna Caligiuri is, and at all relevant times has been, a resident of Pittsburgh, Pennsylvania. Plaintiff Caligiuri is a member of POG.

10. Plaintiff Patrick Young is, and at all relevant times has been, a resident of Pittsburgh, Pennsylvania. Plaintiff Young is a member of POG.

11. Plaintiff Marie Skoczylas is, and at all relevant times has been, a resident of Pittsburgh, Pennsylvania. Plaintiff Skoczylas is a member of POG.

12. Plaintiff David Meieran is, and at all relevant times has been, a resident of Pittsburgh, Pennsylvania. Plaintiff Meieran is a member of POG.

13. Defendant City of Pittsburgh is a second class city organized under the laws of the Commonwealth of Pennsylvania. At all relevant times, the City's employees, representatives and agents were operating under color of state law.

14. Defendant Pittsburgh Bureau of Police is the City of Pittsburgh's police department and law enforcement agency. At all relevant times, the Bureau's employees, representatives and agents were operating under color of state law.

15. Defendant Chief Nathan Harper ("Chief Harper") is an employee of the City of Pittsburgh and is the highest commanding officer of the Pittsburgh Bureau of Police. At all relevant times, Chief Harper has operated under color of state law. Chief Harper is a citizen and resident of Pittsburgh, Pennsylvania. Chief Harper is sued in his official capacity as Chief of Police.

16. Defendant Commander Kathy Degler ("Commander Degler") is an employee of the City of Pittsburgh and is the commanding officer at the City's Zone 4 police station. Zone 4's jurisdiction covers, among other neighborhoods in the City, the Oakland neighborhood. At all relevant times, Commander Degler has operated under color of state law. Commander Degler is a citizen and resident of Pittsburgh, Pennsylvania. Commander Degler is sued in her official capacity as Zone 4 Commander.

Facts

17. Plaintiffs POG, Butler, Caligiuri, Young, Skoczylas and Meieran are involved, with many other individuals, in a public campaign concerning the Iraq war.

18. On September 4, 2007, Plaintiffs, along with approximately forty (40) people (hereafter referred to collectively as “protesters”), engaged in a rally and vigil on the public sidewalk of the 3700 block of Forbes Avenue in the Oakland neighborhood of the City.

19. The City granted Plaintiffs a permit to conduct the rally and vigil for twenty-four (24) hours, from 6:00 p.m. September 4, 2007, until 6:00 p.m. September 5, 2007.

20. The protesters’ rally and vigil was intended to protest the United States’ involvement in Iraq and to educate the public about pulling the United States’ military out of Iraq.

21. At the rally, speakers discussed, among other things, September’s significance vis-à-vis the anti-war movement, an upcoming fast and vigil to protest the United States’ military involvement in Iraq, and military recruitment in the City.

22. Since the end of the September 4, 2007, rally and vigil, Plaintiffs and associated protesters have continued a nearly twenty-four (24) hours a day, seven (7) days a week fast and vigil on the public sidewalk along Forbes Avenue in Pittsburgh’s Oakland neighborhood.

23. The purpose of the fast and vigil is, among other things, to protest the United States’ involvement in Iraq, to educate the public about pulling the United States’ military out of Iraq, and to protest military recruitment in the City.

24. During the fast and vigil, between one (1) and thirty (30) protesters stand, walk, sit or lie down near the Army recruiting station, located in the 3700 block of Forbes Ave. When

the number of protesters increases, participants take care to position themselves so as not to obstruct passage.

25. The protesters are careful to ensure that they never completely obstruct passage on the sidewalk, or block patrons' ability to enter and leave nearby storefronts, including Kinko's/FedEx.

26. Unless the protesters are permitted to sit or lay down on the sidewalk, they will not be able to continue the vigil and fast.

27. Plaintiffs intend to continue the fast and vigil until September 30, 2007.

28. Plaintiffs have, in fact, continued the fast and vigil on the public sidewalk of the 3700 block of Forbes Avenue in Oakland.

29. The public sidewalk upon which Plaintiffs are fasting and holding their vigil is 10 ½ (ten and one half) feet wide when measured from the curb abutting Forbes Avenue to the façade of the private buildings that line the street.

30. At all times, Plaintiffs and protesters ensure that they are not occupying more than five feet of the sidewalk, as measured from the road to the storefronts. Accordingly, at all times Plaintiffs and protesters leave an unobstructed passage of at least five feet for pedestrians to move along the sidewalk.

31. On September 7, 2007, Plaintiff Butler was fasting and participating in the sidewalk vigil.

32. Plaintiff Butler was sitting on the public sidewalk of the 3700 block of Forbes Avenue in Oakland.

33. Plaintiff Butler also had an unrolled sleeping bag next to him, which was lying parallel to Forbes Avenue.

34. Plaintiff Butler was careful to be sure that he was not positioned on the public sidewalk in such a way as to block pedestrian passage or usage of the sidewalk.

35. Plaintiff Butler was careful to be sure that he was not positioned in such a way as to block ingress or egress to the private buildings along Forbes Avenue.

36. Pittsburgh police officers and Commander Degler ordered Plaintiff Butler to move from the area.

37. When Plaintiff Butler did not move, Pittsburgh police officers issued Plaintiff Butler a Non-Traffic Citation/Summons for “obstructing highways and passages” in violation of 18 Pa. C.S. Section 5507. The citation described the violation as follows: “The actor was sitting on the sidewalk with sleeping bag open obstructing sidewalk. R/O [responding officer] and Commander asked actor to move along. Actor clearly stated that he was not moving.” A copy of the citation is attached as Exhibit 1.

38. 18 Pa. C.S. Section 5507 states, in its entirety:

(a) Obstructing. A person, who, having no legal privilege to do so, intentionally or recklessly obstructs any highway, railroad track or public utility right-of-way, sidewalk, navigable waters, other public passage, whether alone or with others, commits a summary offense, or, in case he persists after warning by a law officer, a misdemeanor of the third degree. No person shall be deemed guilty of an offense under this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

(b) Refusal to move on.

(1) A person in a gathering commits a summary offense if he refuses to obey a reasonable official request or order to move:

(i) to prevent obstruction of a highway or other public passage; or

(ii) to maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

(2) An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the

obstruction can be readily remedied by police control of the size or location of the gathering.

(c) Definition. As used in this section the word "obstructs" means renders impassable without unreasonable inconvenience or hazard.

39. At the time that Pittsburgh police officers issued Plaintiff Butler the September 7, 2007 citation, pedestrians were capable of walking on the sidewalk and entering and exiting from the private buildings that line the 3700 block of Forbes Avenue.

40. Despite the directive to do so, Plaintiff Butler did not move from where he was seated on the sidewalk.

41. Pittsburgh police officers did not remove or physically place Plaintiff Butler under arrest.

42. The next day, on September 8, 2007, Plaintiff Butler again was participating in the vigil.

43. Plaintiff Butler was again sitting on the public sidewalk of the 3700 block of Forbes Avenue in Oakland.

44. Plaintiff Butler was careful to be sure that he was not positioned on the public sidewalk in such a way as to block pedestrian passage or usage of the sidewalk.

45. Plaintiff Butler was careful to be sure that he was not positioned in such a way as to block ingress or egress to the private buildings along Forbes Avenue.

46. Pittsburgh police officers ordered Plaintiff Butler to move from the area.

47. When Plaintiff Butler did not move, Pittsburgh police officers advised him that he would be receiving in the mail a summons for a misdemeanor.

48. Despite the directive to do so, Plaintiff Butler did not move from where he was seated on the sidewalk.

49. Pittsburgh police officers did not remove or physically place Plaintiff Butler under arrest.

50. At the time that Pittsburgh police officers issued Plaintiff Butler the September 8, 2007 summons, pedestrians were capable of walking on the sidewalk and entering and exiting from the private buildings that line the 3700 block of Forbes Avenue.

51. At the same time the police were addressing Plaintiff Butler, on September 8, 2007, Plaintiff Caligiuri was lying on the public sidewalk of the 3700 block of Forbes Avenue in Oakland.

52. Plaintiff Caligiuri was lying parallel with Forbes Avenue.

53. Plaintiff Caligiuri was careful to ensure that she was not positioned on the public sidewalk in such a way as to block passage along the sidewalk.

54. Plaintiff Caligiuri was careful to ensure that she was not positioned in such a way as to block entrance to the private buildings along Forbes Avenue.

55. Pittsburgh police officers issued Plaintiff Caligiuri a Non-Traffic Citation/Summons. The citation reads: "Actor engaged in blocking sidewalk area by lying in a sleeping bag, thereby obstructing public passage of pedestrian traffic." A copy of the citation is attached as Exhibit 2.

56. Pittsburgh police officers then ordered Plaintiff Caligiuri to move.

57. When Plaintiff Caligiuri did not move the police officers arrested her and took her to the police station, processed her, detained her for approximately two hours and released her. She was advised that she would receive a summons in the mail for a misdemeanor.

58. At the time that Pittsburgh police officers issued Plaintiff Caligiuri her September 8, 2007 citation, pedestrians were capable of walking on the sidewalk and entering and exiting from the private buildings that line the 3700 block of Forbes Avenue.

59. On Monday, September 10, Plaintiffs' attorneys contacted the City of Pittsburgh Solicitor's Office to discuss the citations and the police officers' harassment of the protesters. During the conversation, Plaintiffs' attorneys explained to an Assistant City Solicitor that the protesters understood that they could not legally obstruct passage, and that they were taking great care to make sure they did not do so. The three-email-message exchange between Plaintiffs' lawyers and the Assistant City Solicitor is attached as Exhibit 3.

60. At about 9:00 a.m. on Friday, September 14, Pittsburgh police officers threatened to arrest Plaintiffs Butler and Caligiuri for sitting or lying down on the sidewalk. Plaintiffs were confined to their small rectangular area near the building and, thus, were in no way obstructing passage along the Forbes Avenue sidewalk or into any of the nearby storefronts. The police officers advised Plaintiffs that they would be receiving summonses in the mail for violating the obstruction statute, 18 Pa.C.S. § 5507.

61. Plaintiffs' attorneys again contacted the City Solicitor's office to complain about the summonses and to reiterate their understanding of the law, namely, that unless the protesters were completely blocking passage that sitting or lying down on the sidewalk was not, and could not be in the context of a protest, illegal.

62. The Assistant City Solicitor called back several hours later to inform Plaintiffs' attorneys that he had spoken to the police and that no summonses or citations would be issued to the protesters for anything that had occurred that morning.

63. On September 17, 2007, Plaintiff Butler was participating in the fast and vigil.

64. Plaintiff Butler was lying on the public sidewalk of the 3700 block of Forbes Avenue in Oakland.

65. Plaintiff was lying parallel to Forbes Avenue, on the far side of the sidewalk away from the road, near the adjacent building.

66. Plaintiff Butler was careful to ensure that he was not positioned on the public sidewalk in such a way as to block passage along the sidewalk.

67. Plaintiff Butler was careful to ensure that he was not positioned in such a way as to block entrance to the private buildings along Forbes Avenue.

68. At 5:30 a.m., Pittsburgh police officers ordered Plaintiff Butler to move.

69. When Plaintiff Butler did not move, Pittsburgh police officers issued Plaintiff Butler a Non-Traffic Citation/Summons for “obstructing highways and other public passages” in violation of 18 Pa. C.S. Section 5507. The citation read: “Defendant was blocking a public sidewalk by Fed Ex, Kinkos 3708 Forbes Av. while sleeping in a sleeping [sic] and refused to move. Then sat up after he was cited.” A copy of the citation is attached as Exhibit 4.

70. At the time that Pittsburgh police officers issued Plaintiff Butler the September 17, 2007 citation, pedestrians were capable of walking on the sidewalk and entering and exiting from the private buildings that line the 3700 block of Forbes Avenue.

71. Despite the fact Plaintiff Butler did not alter his location, but merely sat up in the identical spot, Pittsburgh police officers did not remove or place Plaintiff Butler under arrest.

72. On September 17, 2007, Plaintiff Young was participating in the fast and vigil.

73. Plaintiff Young was lying on the public sidewalk of the 3700 block of Forbes Avenue in Oakland.

74. Plaintiff Young was lying parallel with Forbes Avenue.

75. Plaintiff Young was careful to ensure that he was not positioned on the public sidewalk in such a way as to block passage along the sidewalk.

76. Plaintiff Young was careful to ensure that he was not positioned in such a way as to block entrance to the private buildings along Forbes Avenue.

77. Pittsburgh police officers issued Plaintiff Young a Non-Traffic Citation/Summons. A copy of the citation is attached as Exhibit 5.

78. At the time that Pittsburgh police officers issued Plaintiff Young his citation, pedestrians were capable of walking on the sidewalk and entering and exiting from the private buildings that line the 3700 block of Forbes Avenue.

79. Plaintiffs Skoczylas and Meieran intend to participate in the fast and vigil in the future.

80. Plaintiffs Skoczylas and Meieran intend to sit and/or lie down on the public sidewalk on the 3700 block of Forbes Avenue in Oakland as part of their participation in the fast and vigil.

81. Plaintiffs Skoczylas and Meieran understand the restriction imposed upon them by 18 Pa. C.S. § 5507 and do not intend to obstruct, or render impassable, the public sidewalk.

82. Since the vigil is intended to be a twenty-four-hour-per-day protest that includes at least one person who is fasting (Michael Butler), standing the entire time would be physically impossible.

83. Defendants' insistence, enforced by repeated citations and threats to effect arrest, that Plaintiffs not lie down on the sidewalk, even when done carefully to avoid complete obstruction, is a significant burden on Plaintiffs' First Amendment right of expression and political speech, and one that jeopardizes viability of the protest.

84. The City of Pittsburgh does not, by way of ordinance or other legislation, forbid sleeping on public sidewalks.

85. Panhandlers and homeless people regularly sit and/or lie down on sidewalks and are not issued citations and/or arrested for violating 18 Pa. C.S. § 5507.

86. Absent preliminary injunctive relief, Plaintiffs' right of free expression, as guaranteed by the First Amendment to the United States Constitution and Article I, § 7 of the Pennsylvania Constitution, will be irreparably curtailed, an injury for which there is no remedy at law.

CAUSES OF ACTION

Count I: First Amendment to the United States Constitution – Freedom of Speech

87. Defendants' actions in restricting Plaintiffs' ability to use the public sidewalks to engage in non-violent, non-obstructing protest activities violates the First Amendment to the United States Constitution, as applied to the state and local governments by the Fourteenth Amendment to the United States Constitution.

Count II: Article I, Section 7 of the Pennsylvania Constitution – Freedom of Speech

88. Defendants' actions in restricting Plaintiffs' ability to use the public sidewalks to engage in non-violent, non-obstructing protest activities violates Plaintiff's free speech rights under Article I, Section 7 of the Pennsylvania Constitution.

Count III: First Amendment and Fourteenth Amendments to the United States Constitution – Due Process

89. Defendants' failure to promulgate, and act pursuant to, written policies that delineate where political activity is allowed, what activities are allowed, when they are allowed and any other applicable restrictions on political activities on public sidewalks, violates the First

Amendment and Fourteenth Amendments to the United States Constitution, by failing to provide adequate notice to government officials and the public about permissible political activities.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

1. Declare that Defendants' refusal to allow Plaintiffs to sit, lie down or sleep on a sidewalk, so long as they do not completely obstruct passage, as part of protest activities in the 3700 block of Forbes Avenue in Pittsburgh, violates the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 7 of the Pennsylvania Constitution;
2. Enjoin, preliminarily and permanently thereafter, Defendants and their officials, employees, agents, assigns and others who may be acting in concert with them, from issuing citations, threatening to arrest or actually arresting Plaintiffs for just sitting, lying down or sleeping on the sidewalk in the 3700 block of Forbes Avenue, unless Plaintiffs are positioned so that pedestrians cannot pass by;
3. Award Plaintiffs costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and
4. Grant such other relief as this Court may deem just and appropriate to protect Plaintiffs' constitutional rights.

Respectfully Submitted,

AMERICAN CIVIL LIBERTIES FOUNDATION
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