

DEC 10 2009

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: _____ DEP CLERK

THE ARKANSAS SOCIETY OF FREETHINKERS

PLAINTIFF

v.

CASE NO. 4-09-CV-0925 SW-000

CHARLIE DANIELS, in his official capacity as
ARKANSAS SECRETARY OF STATE

This case assigned to District Judge Wright
and to Magistrate Judge Deere
DEFENDANT

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF FIRST AMENDMENT RIGHTS**

Plaintiff The Arkansas Society of Freethinkers, for its complaint for violation of its
First and Fourteenth Amendments rights, states:

Nature of the Action

1. This is an action challenging defendant's refusal to permit plaintiff to install a temporary Winter Solstice display in that area of the state capitol grounds designated by defendant as a public forum.

2. This action seeks a declaration that defendant's decision to deny plaintiff permission to install a temporary Winter Solstice display is unconstitutional and a preliminary and permanent injunction barring defendant from refusing to permit the Winter Solstice display in the designated public forum of the state capitol grounds.

Jurisdiction

3. This case arises under the Constitution and laws of the United States and presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331.

4. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.* Defendant's constitutional violations are taken

under color of state law and are actionable pursuant to 42 U.S.C. § 1983.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391.

The Parties

6. The Arkansas Society of Freethinkers is a statewide non-profit organization organized and existing under the laws of this state. Part of its purpose is to promote education and awareness of freethinkers, their history, activities and holidays.

7. Defendant Charlie Daniels is the Arkansas Secretary of State. He is sued in his official capacity. The Secretary of State is responsible for overseeing and maintaining the state capitol grounds, including that area designated as a public forum.

Factual Allegations

8. Defendant maintains a policy allowing members of the public to place a temporary display on the state capitol grounds by seeking permission from defendant and complying with certain conditions that are stated in the policy, which is entitled "Temporary Displays on State Capitol Grounds." A copy of this policy is attached as Exhibit 1 to this complaint. Defendant has therefore designated a public forum for temporary displays on the state capitol grounds.

9. On October 16, 2009, plaintiff submitted a written request to defendant to reserve a site for the installation of a temporary Winter Solstice display on the state capitol grounds. The request contained a written description and photographs of the display. A copy of the written request is attached as Exhibit 2 to this complaint.

10. By letter dated November 4, 2009, defendant wrote plaintiff denying its request on the basis that he had the authority to do so under A.C.A. § 12-14-102. A copy of

defendant's November 4, 2009, letter is attached as Exhibit 3 to this complaint. This statute provides authority to the state capitol police to maintain "proper order and decorum."

11. The only temporary display presently on the state capitol grounds in the designated public forum area is a creche with a wood exterior and nativity figures carved out of wood. The display is not decorated with lights or ornamentation of any kind and is devoid of a festive tone.

12. In December 2009, in response to an Arkansas Freedom of Information Act request, defendant provided all applications and correspondence relating to requests for temporary displays and the procedures and rules regulating their installation. The only documents in defendant's possession were plaintiff's applications for a temporary Winter Solstice display for this and the previous year, defendant's denial of these applications, and the policy attached as Exhibit 1 to this complaint.

13. Even though there is a temporary creche display on the state capitol grounds installed by a private organization, there exists no written request or written approval of any request, or any proof of insurance, as required by the defendant's policy. (Exhibit 1)

14. At a December 8, 2009 meeting with representatives of plaintiff and representatives of defendant, the plaintiff's representative reiterated its request for a permit and offer to show defendant's representatives a complete set of photographs of the completed display. Defendant's representative reiterated defendant's decision to deny plaintiff's request. The stated reason for his denial was that he had the authority and the discretion to do so. Further, defendant stated through his representatives that he did not feel the Winter Solstice display was "consistent with the tone of the other decorations and displays." Defendant's

representative confirmed, however, that plaintiff had completed all necessary steps to apply for a temporary display permit. No reason to deny plaintiff's request was stated other than the objection to the "tone" of the Winter Solstice display.

15. The Winter Solstice is an ancient holiday that is observed around the time of the winter solstice, December 21. It is celebrated by members of The Arkansas Society of Freethinkers. The purpose of the Winter Solstice display is to provide an expression of some members of the society's beliefs and to provide an opportunity to educate the public about the Winter Solstice and freethinkers. As such, the display is speech protected by the First Amendment.

16. Defendant's action is preventing plaintiff from exercising its First Amendment rights.

17. Plaintiff is suffering, and will continue to suffer, irreparable harm by reason of defendant's action. If plaintiff is not permitted to install its display on the state capitol grounds as soon as possible, and certainly no later than December 21, 2009, it will be prevented from exercising its First Amendment rights.

18. Unless restrained, defendant will continue to violate the Constitution and reject plaintiff's request.

Causes of Action

19. Defendant's action in denying the plaintiff permission for its temporary display violates the First and Fourteenth Amendments because it is based on the defendant's unbridled discretion and conditions access to the designated public forum on the state capitol grounds entirely on defendant's enforcement of his personal acceptance of content and viewpoint

restrictions on otherwise available constitutionally protected speech. Defendant's action unconstitutionally burdens the rights of plaintiff and its members to communicate protected expression.

20. Defendant impermissibly imposes content and viewpoint-based restrictions on speech in a public forum.

21. Defendant's action is not narrowly tailored to accomplish any compelling governmental purpose. Indeed, there is no valid governmental purpose furthered by defendant's action, and he has not articulated any.

Prayer for Relief

WHEREFORE, plaintiff respectfully requests that the Court:

- (a) declare defendant's decision to reject plaintiff's Winter Solstice display to be unconstitutional.
- (b) preliminarily and permanently enjoin defendant from denying plaintiff's request for a temporary display.
- (c) award plaintiff costs and attorney fees as allowed by law; and
- (d) grant to plaintiff such other, further and different relief as may be just and proper.

Respectfully submitted,

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