

U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

JUN 27 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

By **DOUGLAS F. YOUNG**, Clerk
Deputy Clerk

MICHAEL RODGERS

PLAINTIFF

vs.

CASE No. *17-6054*

**JASON STACHEY, IN HIS OFFICIAL
CAPACITY AS CHIEF OF THE HOT SPRINGS,
ARKANSAS POLICE DEPARTMENT**

DEFENDANT

COMPLAINT

Introduction

1. This is an action brought to safeguard the most fundamental rights of speech and expression under the First and Fourteenth Amendments to the United States Constitution and to protect Plaintiff and others from unjustified government intrusion. Plaintiff Rodgers has been arrested, jailed, prosecuted, and convicted in Garland County for begging. Hot Springs police have informed him that if he dared to panhandle in Hot Springs, he would be sent to jail. He is not alone. Many others also suffer this same government persecution and prosecution for their speech. Predictably, the threat of citation, arrest, detention, prosecution, conviction and penalties under these ordinances has chilled Plaintiff and others from exercising their constitutionally-protected rights to peacefully ask others for money, food, or other charity within the city limits of and Hot Springs.

2. On September 6, 2016, the Hot Springs City Council enacted Ordinance 4-9-8 “Ban on Solicitation”, which makes it a crime for a person to enter upon a roadway, median, or portion of a public street, or otherwise approaching a vehicle located in any portion of a public street or roadway for the purpose of soliciting anything from the occupant of a vehicle.¹ The ordinance fails all relevant tests applied by the United States Supreme Court and other federal and state courts. It is a content-based restriction on freedom of speech and cannot withstand strict scrutiny. It should be invalidated on its face.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331 and 1343. The Court can grant declaratory relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

4. Venue is proper under 28 U.S.C. § 1391(b) as Defendant’s headquarters is located in Garland County, Arkansas.

The Parties

5. Plaintiff Michael Andrew Rodgers has begged in Hot Springs, Arkansas. Because of Hot Springs Ordinance 4-9-8, he is now chilled from doing so.

6. Defendant Jason Stachey is the Chief of Police for the City of Hot Springs. He is sued in his official capacity. Members of the Hot Springs Police Department are under the supervision of Chief Stachey. They enforce Ordinance No. 4-9-8 at the direction of Defendant.

7. At all times described herein Defendant Stachey and the police officers under his supervision are acting under color of state law.

¹ Ordinance 4-9-8 was previously designated Ordinance 6168.

The Challenged Laws

8. Ordinance No. 4-9-8 is content-based in that it singles out soliciting from among other types of speech, includes a ban on soliciting in traditional public forums. It is not narrowly-tailored to further any legitimate governmental interest.

9. Plaintiff and other individuals are concerned about being cited, arrested, jailed, prosecuted, found guilty and penalized by fines and court fees under the anti-begging law. They are chilled from exercising their constitutional rights to free speech and are refraining and will continue to refrain from panhandling in Hot Springs unless the laws are invalidated.

Facts

10. Plaintiff Rodgers has been arrested, jailed, prosecuted, and convicted in in Hot Springs for begging. The Hot Springs police have informed him that if he dares to panhandle in Hot Springs, he will be sent to jail under the authority of Hot Springs Ordinance No. 4-9-8.

COUNT I (Facial Violation Right to Freedom of Speech)

11. Plaintiff restates and incorporates by reference as if fully set forth here the allegations of the preceding paragraphs.

12. The First Amendment to the United States Constitution prohibits the abridgement and chilling of free speech. The First Amendment is applicable to the states through the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

13. Ordinance 4-9-8 of the Hot Springs municipal code is facially invalid under the First Amendment because it criminalizes protected speech, prohibits a substantial amount of protected speech and generally chills protected speech. It also is invalid because they are content-based restrictions on protected speech and are not narrowly tailored to serve any compelling state

interest.

Relief Requested

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Issue a preliminary and permanent injunction restraining Defendant, his employees, agents and successors from enforcing the City of Hot Springs Ordinance 4-9-8.
2. Enter a judgment declaring that the ordinance on its face violates the United States Constitution and permanently enjoin their enforcement by Defendants;
3. Award Plaintiff's costs and attorneys' fees pursuant to 42 U.S.C. §1988; and
4. Grant such other and further relief as the Court deems just and proper.

Dated: 6/27/17

Respectfully Submitted,

Bettina E. Brownstein Law Firm
904 West 2nd Street, Suite 2
Little Rock, Arkansas 72201
Tel: (501)920-1764
Email: bettinabrownstein@gmail.com

By Bettina E. Brownstein
Bettina E. Brownstein (85019)

and

Monzer Mansour (97144)
70 College Ave. Suite 10
Fayetteville, Arkansas 72701
Tel: (479) 521-6361
Email: monzerlaw@gmail.com
Attorneys for Plaintiffs

By Monzer Mansour
Monzer Mansour

On behalf of the Arkansas Civil Liberties Union
Foundation, Inc.

UNITED STATES DISTRICT COURT

for the

Western District of Arkansas

MICHAEL RODGERS

Plaintiff(s)

v.

JASON STACHEY, IN HIS OFFICIAL CAPACITY AS CHIEF OF THE HOT SPRINGS, AR POLICE DEPARTMENT

Defendant(s)

Civil Action No.

17-6054

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jason Stachey, in his Official Capacity Hot Springs Police Dept. 641 Malvern Ave., Hot Springs, AR 71901

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Bettina E. Brownstein, 904 W. 2nd Street, Ste. 2, Little Rock, AR 72201 Monzer Mansour, 70 N. College Ave., Ste 10, Fayetteville, AR 72701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

6-27-17

Yeu Anderson

Signature of Clerk or Deputy Clerk