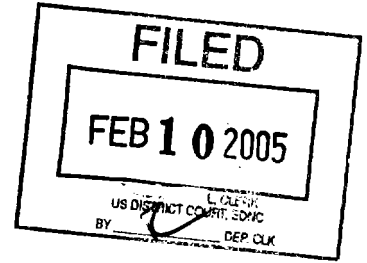


THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:05-CV-102(B) (1)



DENNIS GREEN,

PLAINTIFF,

vs.

CITY OF RALEIGH, and JANE
PERLOV, individually and in her official
capacity as Chief of Police for
City of Raleigh,

DEFENDANTS.

VERIFIED COMPLAINT

Comes now Plaintiff Dennis Green, by and through counsel, and for his cause of action against Defendants City of Raleigh and Jane Perlov, avers the following:

INTRODUCTION

1. This is a civil rights action brought by Plaintiff Dennis Green, seeking injunctive relief, declaratory relief, and damages, pursuant to 42 U.S.C. §§1983 and 1988, against Defendants City of Raleigh and Jane Perlov, individually and in her official capacity as Chief of Police for City of Raleigh.

2. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights of free speech, free exercise of religion, peaceable assembly, due process and equal protection by Defendants.

3. Defendants' actions have deprived and will continue to deprive Plaintiff Dennis Green of his paramount rights and guarantees provided under the United States Constitution.

4. Each and every act of Defendants alleged herein were committed by Defendants, both of them, under the color of state law and municipal authority.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§1331 and 1343. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202. This Court also has jurisdiction over the pendant state law claims.

6. Venue is proper in the Eastern District of North Carolina pursuant to 28 U.S.C. §1391(b), because the claims arise in this district and Defendants reside in this district.

PLAINTIFF

7. Plaintiff Dennis Green ("Mr. Green") resides in Cumberland County, Virginia.

DEFENDANTS

8. Defendant City of Raleigh is a municipal governmental authority, a subdivision of State of North Carolina.

9. Defendant Jane Perlov ("Chief Perlov") is the Chief of Police for City of Raleigh. In her official capacity, she is responsible for the enforcement of City of Raleigh's laws and ordinances.

FACTS

10. Mr. Green is a professing Christian. As a tenet of his faith, he shares his religious beliefs in public, including his convictions about abortion. He speaks out against abortion on public ways.

11. Pursuant to this tenet of his faith, Mr. Green wishes to convey his message about

abortion on public ways and areas in Raleigh, North Carolina.

12. On Saturday, August 23, 2003, Dennis Green, and a few of his friends, converged on a public way in Raleigh, North Carolina along side Edwards Mills Road in the vicinity of the RBC Center. Mr. Green was there for the specific purpose of sharing his viewpoint on the issue of abortion.

13. Mr. Green carried a sign and attempted to distribute literature concerning the issue of abortion. He also intended to speak with individuals in the vicinity about the abortion issue and his religious beliefs about same.

14. Despite his peaceful conduct and intent, very soon after placing himself on the public way, Mr. Green was approached by police officers with the City of Raleigh Police Department. The police officers promptly informed Mr. Green that he and his companions would be required to cease their expressive activity and leave the area immediately, or be cited for violating the law.

15. Mr. Green was further told that if he refused to leave, his sign would be confiscated. For reason, the Raleigh police officer stated that Mr. Green was required to adhere to the "permit process."

16. The subject permit ordinance, relied upon by the Raleigh police officers, reads as follows:

RALEIGH CODE
ARTICLE C. PARADES, DEMONSTRATIONS AND STREET EVENTS

Sec. 12-1055. PICKETING DEFINED.

The terms *picket*, *pickets* and *picketing* as used herein are deemed to include "demonstrators," *persons* participating in vigils and any action primarily promoting or objecting to a policy upon those portions of the public ways not used primarily for vehicular parking and moving traffic and not constituting a parade.

Sec. 12-1056. PICKETING PERMITTED; NOTICE OF INTENT AND RECEIPT REQUIRED.

Peaceful *picketing shall* be permitted in the *City* provided the same is done under the *following* conditions:

- a. No *picketing shall* be conducted on the public ways of this *City* and no *person shall* participate in the same unless notice of intent to *picket* has been given to the Chief of Police or his designated representative, and unless a receipt of such notice has been issued.
- b. Notice of intent to *picket shall* be given *in writing* and *shall* contain the *following* information.
 - i. The name, if any of the organization or group sponsoring or proposing to *picket*;
 - ii. The location or locations in the *City* where the *pickets* propose to assemble and demonstrate;
 - iii. The date on which the *picketing* is to occur;
 - iv. The name of the *person* and organization giving notice of intent to *picket*;
 - v. Whether or not *persons* below the age of eighteen (18) *years* are expected to participate; and
 - vi. The *person* or *persons* to be in charge of the activity and who will accompany it and carry any receipt of notice at all times.
- c. It is unlawful for any *person* to engage in *picketing* before or about the *residence* or dwelling of any individual.
- d. Upon the giving of notice of intent to *picket*, properly completed as hereinabove set out, the designated *officer shall* immediately issue a receipt for notice. The receipt *shall* contain all information stated in the notice. Notice *shall* be given by the holder of a receipt of notice

to the Chief of Police or his designated representative immediately upon the cessation of such *picketing* for a period of twenty-four (24) hours or more. Before resumption of *picketing* interrupted for any such period, a new notice *shall* be given and a new receipt issued.

Sec. 12-1057. STANDARDS OF CONDUCT FOR PICKETING ACTIVITIES.

- a. *Picketing shall* be conducted only on portions of the public ways not used primarily for vehicular parking or moving traffic.
- b. *Pickets may carry written* or printed placards or signs not exceeding twenty-four (24) inches promoting the objective for which *picketing* is done provided the words used would not tend to incite violence.
- c. *Pickets must, if marching, march in single file, not abreast, and may not march closer together than fifteen (15) feet, except in passing one another. Pickets not marching shall remain at least fifteen (15) feet apart.*
- d. If *pickets* promoting different objectives, causes, actions, or policies desire to use a sidewalk that is already used for *picketing*, the Chief of Police or his designated agents *shall* allot a number of *pickets* promoting each objective, to use such sidewalk, on an equitable basis, proportionate to the number of objectives being promoted.
- e. *Pickets shall* be restricted to the use of the outermost half of the sidewalk or other public way nearest the *street* and *shall* not at any time nor in any way obstruct, interfere with, or block: *persons* entering or exiting from vehicles; *persons* crossing *streets* or otherwise using the public way; the entrance or exit to any building or access to *property* abutting the *street* or sidewalk; or pedestrian or vehicular traffic.
- f. No *person* observing, engaging in, or assisting in *picketing shall* bring to or allow to remain in the immediate area of *picketing* any vicious animal.
- g. The provisions of §§ 12-1055 through 12-1057 are mandatory, and not merely directory, and failure to comply with the provisions of these sections is hereby declared to be unlawful and punishable as provided by law.

17. As interpreted and construed by the City of Raleigh and the City of Raleigh Police Department, the permit ordinance applies to any individual expression on any public way in the City of Raleigh.

18. In order for any individual to engage in expression in Raleigh, the permit ordinance requires advance notice to be given.

19. Under the permit ordinance, any individual who wishes to express any form of message on a public way, whether it be public speaking, holding up a sign, handing out literature or purposeful conversation, like Mr. Green, that individual must as a prior restraint secure a permit in advance in order to engage in such expressive activity.

20. The requirement to secure governmental permission to participate in religious activity violates Mr. Green's conscience.

21. The permit ordinance eliminates anonymous speech, as any individual seeking to speak on a public way is required to produce identity.

22. The permit ordinance further limits speech in several and various ways, requiring, among other things, that any sign used be a maximum of twenty-four (24) inches, that any grouping of individuals who wish to share a message stand fifteen (15) feet away from each other at all times, and that any individual wishing to speak stand on the outermost half of a sidewalk.

23. The promulgation of Sec. 12-1051, *et. seq.*, its application to individual expression, and its enforcement by Defendants City of Raleigh and Jane Perlov, in her official capacity as the Chief of Police for City of Raleigh, severely limit the constitutionally protected speech and religious activities of Mr. Green on public ways in Raleigh, North Carolina.

24. Mr. Green is deterred from speaking on public ways in the City of Raleigh due to the permit ordinance. As a result of the enforcement of the parade permit process, Mr. Green fears that he will be arrested upon engaging in any type of speech activity on public ways in the City of Raleigh without first obtaining a permit.

25. The impact of deterring Mr. Green from exercising his constitutional rights on public ways in the City of ~~Florence~~ ^{Raleigh and} constitutes irreparable harm to Mr. Green.

CAUSE OF ACTION

26. The promulgation of the permit process and enforcement of which by the Defendants, as set out herein acts, as a violation of freedom of speech guaranteed under the First and Fourteenth Amendments to the United States Constitution.

27. The promulgation of the permit process and enforcement of which by the Defendants set out herein acts as a violation of free exercise of religion guaranteed under the First and Fourteenth Amendments to the United States Constitution.

28. The promulgation of the permit process and enforcement of which by the Defendants set out herein acts as a violation of peaceful assembly guaranteed under the First and Fourteenth Amendments to the United States Constitution.

29. The promulgation of the permit process and enforcement of which by the Defendants set out herein acts as a violation of due process guaranteed under the First and Fourteenth Amendments to the United States Constitution.

30. The promulgation of the permit process and enforcement of which by the Defendants set out herein acts as a violation of equal protection guaranteed under the First and Fourteenth

Amendments to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dennis Green respectfully prays for relief in that this Court:

- A. Assume jurisdiction over this action;
- B. Enter a judgement and decree declaring that the permit ordinance, Sec. 12-1051, *et seq.*, is unconstitutional on its face, and as applied to the individual religious speech of Plaintiff as violation of Plaintiff's freedom of speech, free exercise of religion, peaceable assembly, due process, and equal protection guaranteed by the First and Fourteenth Amendments to the United States Constitution;
- C. Enter a preliminary and permanent injunction enjoining Defendants, their agents, employees, and all persons in active concert or participation with them, or any of them, from applying the permit ordinance, Sec. 12-1051, *et seq.*, so as to restrict any of the Plaintiff's desired religious speech activities in public areas and ways in Raleigh, North Carolina;
- D. Award Plaintiff Dennis Green an award of actual and/or nominal damages in an amount deemed appropriate by this Court;
- E. Grant to Plaintiff Dennis Green an award for his costs for litigation, including reasonable attorney's fees and expenses, pursuant to 42 U.S.C. § 1988; and
- F. Grant such other and further relief as appears to this Court to be equitable and just.

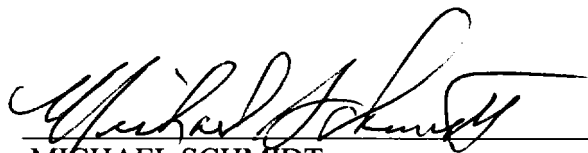
Respectfully submitted,

This is the 10th day of February, 2005.

By:



NATHAN W. KELLUM
TN BAR #13482; MS BAR # 8813
BENJAMIN W. BULL
AZ BAR # 009940
Attorneys for Plaintiff
ALLIANCE DEFENSE FUND
P.O. Box 11159
Memphis, TN 38111
901-323-6672
Fax-901-323-6674



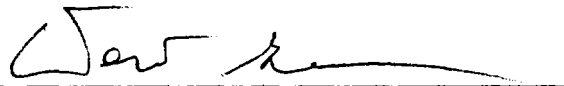
MICHAEL SCHMIDT
SB# 12545
Attorney for Plaintiff
444 South Main Street
Laurinburg, N.C. 28352
910-266-9017
Fax-910-266-9006
LR 83.1 Counsel

VERIFICATION

State of Virginia


County of Cumberland)

Dennis Green, a citizen of the United States and resident of Powhatan, Virginia, being first duly sworn according to law, deposes and states that he has read the foregoing complaint, and that the statements contained therein are true and correct to the best of his knowledge, information, and belief.



Dennis Green

Sworn to and subscribed in my presence this 28th day of January, 2005.


NOTARY PUBLIC

My Commission expires:

My Commission Expires June 30, 2007