Summons not issued

FILED
04 NOV -1 PM 12:20
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BEACON JOURNAL
PUBLISHING COMPANY, INC.,
44 East Exchange Street
Akron, Ohio 44328,

and

M. CHARLENE NEVADA
44 East Exchange Street
Akron, Ohio 44328

Plaintiffs,

-vs-

J. KENNETH BLACKWELL
SECRETARY OF STATE
180 E. Broad Street
15th Floor
Columbus, Ohio 43215

and

THE BOARD OF ELECTIONS
SUMMIT COUNTY
470 Grant Street
Akron, Ohio 44311

and

CASE NO. 5:04CV 2178
JUDGE

JUDGE MATIA

MAG. JUDGE BAUGHMAN

COMPLAINT

42 U.S.C. § 1983

PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF REQUESTED

BRYAN J. WILLIAMS)
EXECUTIVE DIRECTOR)
THE BOARD OF ELECTIONS)
SUMMIT COUNTY)
470 Grant Street)
Akron, Ohio 44311)
)
Defendants.)

Come now the Plaintiffs, Beacon Journal Publishing Company, Inc. ("Beacon Journal") and M. Charlene Nevada ("Nevada"), by and through their undersigned counsel, and for their Complaint against the Defendants in this action, respectfully aver as follows:

NATURE OF ACTION

1. This civil action arises from the unconstitutional and unlawful directive by Ohio Secretary of State J. Kenneth Blackwell to deprive citizens, and particularly news reporters and photographers, from their constitutional rights and responsibilities to observe, report upon and photograph activities at polling places throughout Ohio on Election Day, November 2, 2004. The Complaint seeks permanent and preliminary injunctive relief and compensatory damages under 42 U.S.C. § 1983 and for attorneys fees under 42 U.S.C. § 1988. Moreover, the Complaint seeks declaratory relief under the Federal Declaratory Judgment Act.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4) and 1367.

VENUE

3. The claims made in this action rest on events that have occurred or will occur within this judicial district, and venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Beacon Journal is a daily newspaper of general circulation with its principal place of business located at 44 East Exchange Street, Akron, Ohio 44328. The newspaper is sold predominantly in Summit County and the four surrounding counties.

5. J. Kenneth Blackwell is the Secretary of State of Ohio and is charged with governing elections in the State of Ohio.

6. The Board of Elections of Summit County is a public board created by Ohio statute and charged with enforcing Ohio election laws and regulations in Summit County, Ohio.

7. Bryan J. Williams is the Executive Director of the Board of Elections of Summit County, Ohio, and is charged with enforcing Ohio's election laws and regulations within Summit County, Ohio.

BACKGROUND

8. The Beacon Journal employs reporters and photographers who are assigned to cover news events, including the election to be held in Summit County and all Ohio counties on November 2, 2004. The Beacon Journal's reporters and photographers have been assigned to cover elections in Summit County and other Ohio counties for every local, state and national election for many decades.

9. On Friday, October 29, 2004, the Beacon Journal's reporter, Jim Carney, and photographer, Lew Stamp, were covering early voting at the Summit County Board of Elections. At that time, they were told that they could be denied access to polling places.

10. On October 20, 2004, Secretary of State J. Kenneth Blackwell issued a directive to all boards of elections in Ohio, advising them that Ohio law prohibits ***anyone*** on Election Day, from "...entering a polling place for any reason other than to vote, unless the person is an

election official, a challenger or witness appointed pursuant to R.C. 3505.21, or a police officer." A true, accurate and complete copy of the directive is attached to this Complaint as Exhibit A.

11. Keith Scott, attorney for Secretary of State Kenneth J. Blackwell, sent an e-mail to the Beacon Journal, referring to the directive, saying that "Secretary Blackwell's action was merely a mandate to the boards to strictly adhere to the law."

12. Attorney Scott expressed to the Beacon Journal that the Secretary of State's directive is designed to keep *all non-voting* persons out of polling places on Tuesday, November 2, including reporters and photographers who are assigned there as part of their newsgathering duties.

13. Mr. Scott said the directive was a "practical decision" designed to eliminate "chaos" in the polling places.

14. Reporters and photographers have historically and always had access to polling places to report upon and photograph the electoral process.

15. Polling places are public fora under the First Amendment to the United States Constitution.

COUNT ONE

16. Plaintiffs restate the allegations set forth above as if fully rewritten herein.

17. The Beacon Journal's news reporters and photographers have a First Amendment right to access at polling places in Summit County and throughout Ohio under the First Amendment to the United States Constitution.

18. O.R.C. §3501.35, which prohibits loitering near polls, proscribes any person, not "an election official, employee, witness, challenger or police officer," from entering "the polling place during the election, except for the purpose of voting." That section also states that, "no

person shall loiter or congregate within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place..." This section of Ohio law has never been interpreted in such a way as to prohibit reporters and photographers from entering polls to report upon events therein or to take photographs.

19. By enforcing this statute, Defendants are depriving Plaintiffs and their employees from exercising their First Amendment rights to observe the polling places, report upon the events taking place therein, and photograph activities within these public fora.

20. The above-referenced wrongful actions of Defendants have deprived and will deprive Plaintiffs and their employees of certain rights secured by the United States Constitution and have been committed under color of state law. As such, all of the Defendants are liable for compensatory damages pursuant to 42 U.S.C. § 1983 for the injuries caused by their unconstitutional conduct.

21. Furthermore, under 42 U.S.C. § 1988, all Defendants are liable for an award of reasonable attorneys fees and costs incurred by Plaintiff in the prosecution of this civil action.

COUNT TWO

22. Plaintiffs restate the allegations set forth above as if fully rewritten herein.

23. Plaintiffs seek a declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202, that the Ohio Revised Code statute applicable, O.R.C. § 3505.35, is unconstitutional as applied and enforced by Defendants against Plaintiffs and their employees. This statute as applied and enforced is vague and overly broad, all in violation of the First and Fourteenth Amendments to the United States Constitution.

COUNT THREE

24. Plaintiffs restate the allegations set forth above as if fully rewritten herein.

25. Because Defendants have stated their intention to proscribe Plaintiffs and their employees from reporting upon the news taking place on Election Day, November 2, 2004, Plaintiffs (as well as all of the readers of the *Akron Beacon Journal*) will be permanently deprived of their constitutional rights to report upon (and read about) Election Day events and occurrences that will occur at polling places throughout Ohio. This deprivation will cause permanent and irreparable injury to Plaintiffs, their employees and their readers.

26. For the reasons stated, Plaintiffs are entitled to a temporary restraining order, a preliminary injunction, and/or a permanent injunction against Defendants preventing them from barring Plaintiffs and their employees from polling places on Election Day.

WHEREFORE, Plaintiffs pray for relief from this Court as follows:

A. With respect to Count One, for an award of damages and attorneys fees as justified under the facts and law to be developed before trial;

B. As to Count Two, for a declaration that O.R.C. § 3501.35 be declared unconstitutional as applied to and enforced against Plaintiffs and their employees and correspondents;

C. A temporary restraining order, a preliminary injunction and a permanent injunction prohibiting Defendants from interfering in any manner with the newsgathering activities of the Beacon Journal, its reporters, photographers, correspondents or other journalists as they lawfully conduct their business in reporting upon activities at polling places on Election Day, November 2, 2004, including a prohibition that Defendants refrain from interfering in any manner with the newsgathering activities of the Beacon Journal, its reporters and photographers, correspondents and other journalists who are assigned to polling

places and who shall, in the course of their newsgathering assignments, interview or attempt to interview voters, potential voters, poll workers, challengers, and others associated with the voting process.

Respectfully submitted,

Karen Lefton – 0024522
The Akron Beacon Journal
44 East Exchange Street
Akron, Ohio 44328
Phone: (330) 996-3185
Fax: (330) 996-3678
klefton@theakronbeaconjournal.com

Ronald S. Kopp – 0004950
ROETZEL & ANDRESS
222 South Main Street, Suite 400
Akron, Ohio 44308
Phone: (330) 376-2700
Fax: (330) 376-4577
rkopp@ralaw.com

Attorneys for Plaintiffs

1213114_1 / 006840-0001