

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

COMMON SENSE PATRIOTS OF
BRANCH COUNTY; BARBARA BRADY;
and MARTIN LEPPER,

Plaintiffs,

v.

CITY OF COLDWATER; and JEFFREY BUDD,
in his official capacity as City Manager, City of
Coldwater,

Defendants.

COMPLAINT

[Civil Rights Action under
42 U.S.C. § 1983]

THOMAS MORE LAW CENTER
Robert J. Muise, Esq. (P62849)
Richard Thompson, Esq. (P21410)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
rmuise@thomasmore.org
(734) 827-2001
Counsel for Plaintiffs

Plaintiffs Common Sense Patriots of Branch County, Barbara Brady, and Martin Lepper (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, bring this civil rights Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging “Resolution No. 10-31,” which unconstitutionally restricts Plaintiffs’ right to freedom of speech.

2. On or about November 8, 2010, Defendants passed Resolution No. 10-31, which prohibits Plaintiffs from expressing their political message through the display of banners or

other signs in Four Corners Park, a traditional public forum located within the City of Coldwater, Michigan.

3. Plaintiffs seek a declaration that Defendants' sign restriction violates their clearly established constitutional right to freedom of speech as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Defendants' unconstitutional sign restriction; and a judgment awarding nominal damages. Plaintiffs also seek an award of their reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiffs' claims for nominal damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court.

6. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PLAINTIFFS

7. Common Sense Patriots of Branch County (hereinafter "Common Sense Patriots") is an unincorporated association of individuals who engage in political speech through various activities, including assemblies, meetings, and rallies in which they express their political views through sign displays of various types and description at Four Corners Park and elsewhere in the City of Coldwater. Plaintiffs Barbara Brady and Martin Lepper are members of Common

Sense Patriots.

8. The mission statement of Common Sense Patriots is as follows: “To encourage an exchange of ideas and information on how to improve government and its obligations to its citizenry based upon common sense principles. To educate and provide, to all interested individuals, materials to help them make informed decisions on current events and issues. To support those leaders that represent the people and the principles contained in the Constitution of the United States of America.”

9. Plaintiff Barbara Brady is an adult resident of the City of Coldwater, Michigan, and a citizen of the United States. She is a member of Common Sense Patriots, and she associates with other members of Common Sense Patriots to engage in expressive association and political speech, including political speech through sign displays of various types and description at Four Corners Park and elsewhere in the City of Coldwater.

10. Plaintiff Martin Lepper is an adult resident of Coldwater Township, Michigan, and a citizen of the United States. He is a member of Common Sense Patriots, and he associates with other members of Common Sense Patriots to engage in expressive association and political speech, including political speech through sign displays of various types and description at Four Corners Park and elsewhere in the City of Coldwater. Plaintiff Lepper is also a graphic designer. Accordingly, he is principally responsible for the signs displayed during the political assemblies, meetings, and rallies organized by Common Sense Patriots.

DEFENDANTS

11. Defendant City of Coldwater (hereinafter “City”) is a municipal entity organized and existing under the laws of the State of Michigan. It is a municipal corporation with the right to sue and be sued.

12. The City, through its City Council and officials, including Defendant Budd, is responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, resolutions, ordinances, laws, policies, practices, procedures, and/or customs of the City, including Resolution No. 10-31.

13. Defendant Jeffrey Budd is the City manager. At all relevant times, he was an agent, servant, and/or employee of the City, acting under color of state law. As the City manager, he is the City's chief executive officer, and he is responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, resolutions, ordinances, laws, policies, practices, procedures, and/or customs of the City, including Resolution No. 10-31. Defendant Budd is sued in his official capacity only.

STATEMENT OF FACTS

14. Common Sense Patriots was established in 2009 as part of the nationwide political movement known as the TEA ("Taxed Enough Already") Party. Consequently, Plaintiffs' political assemblies, meetings, and rallies are typically advertised and described as "TEA Parties." In addition to the TEA Parties, Common Sense Patriots also holds "Town Hall" style meetings at various locations in the City.

15. To date, Plaintiffs have held seven TEA Parties in the City. Five of those TEA Parties were held at Four Corners Park, which is a public park located within the City.

16. Plaintiffs intend to hold political assemblies, meetings, and rallies, including TEA Parties, at Four Corners Park in the future.

17. Plaintiffs display political signs of various types and description at their political assemblies, meetings, and rallies, including at their TEA Parties held at Four Corners Park.

18. At times, more than two hundred people have attended Plaintiffs' TEA Parties at Four Corners Park. Plaintiffs would often invite elected officials, political candidates, judges, and other public figures to these assemblies to give speeches and to discuss and debate public questions.

19. Plaintiffs' TEA Parties are and always have been peaceful and non-disruptive.

20. During the TEA Parties at Four Corners Park, Plaintiffs and others would hold and display signs with political messages such as "No More Taxes," "Give Me Liberty . . . Not Debt," "Remember [to vote] November," "Listen to the People," "Congress: Out of Control," "Born Free . . . Taxed to Death," "Stop Borrowing from Our Grandchildren," and "Bring Back Common Sense," among others. They would also similarly hold and display American flags and Gadsden flags ("Don't Tread on Me"), among others.

21. During the TEA Parties at Four Corners Park, Plaintiffs and others would display their signs, including their banners and flags, by affixing them to the ground or to a stationary object located within the park. For example, temporary poles would often be used to display Plaintiffs' banners advertising the TEA Parties.

22. On its website (www.coldwater.org), the City describes the Four Corners Park, which is listed as larger than "1 Acre" but "Under 25 Acres," as follows:

Located in the heart of the City at the intersection of US 12 (Chicago Street) and old US 27 (Marshall Street), Four Corners Park presents a striking testimony to the City's history. It is actually four distinct parks, each with a unique story. The northwest quadrant hosts the annual Memorial Day festivities and is the site of the buried time capsule with artifacts of the City's nearly 150 year history. Monuments to those who have served and given the ultimate sacrifice to defend our way of life grace this park.

The northeast park carries a military motif with a gun and carriage from the Civil War and a separate piece from World War II. This park hosts the bands and performers for the popular "Entertainment Under the Stars" held during the summer months.

The stately and historic Coldwater District Library graces the southeast park with a handsome statue in honor of those who served in the Spanish-American and Philippine Wars.

The southwest park includes a sandbox play area along with seating (sic) sit, relax and enjoy the downtown scenery.

23. Four Corners Park is a public park where people gather for various private and City sponsored events and activities.

24. Four Corners Park is a location where individuals and groups gather to engage in expressive conduct, including political assemblies, meetings, and rallies such as Plaintiffs' TEA Parties.

25. Four Corners Park has "immemorially been held in trust for the use of the public and, time out of mind, [has] been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."

26. Four Corners Park is a traditional public forum located within the City.

27. For many years, individuals and organizations, including Plaintiffs, displayed signs and banners at Four Corners Park. As noted previously, Plaintiffs would typically display political signs, banners, and flags, including signs related to their TEA Parties. Plaintiffs' signs have never caused any physical obstructions or other disruptions.

28. For more than two decades, temporary poles were used to hang banners throughout the Four Corners Park. To facilitate the display of banners, the City installed a set of permanent poles in the northwest side of the park in 1995 and a second set of permanent poles on the southwest corner in 2006.

29. The banners displayed at Four Corners Park would often include messages advertising and announcing events taking place within the park and elsewhere within the City

and county. The banners included messages such as “Entertainment Under the Stars,” “Remember the Alamo Car Cruise,” and “Kites Over Branch County,” among others.

30. In 2010, Plaintiffs informed the City that they were going to display a banner at Four Corners Park that would announce an upcoming TEA Party. Plaintiffs’ red, white, and blue banner stated, “Branch County Tea Party . . . July 31st . . . 1:00 pm.” Plaintiffs requested permission to use the City’s poles to display their banner.

31. Defendants denied Plaintiffs’ request based on the content and viewpoint of Plaintiffs’ speech. That is, Defendants rejected the request because Plaintiffs’ banner was “political” speech promoting the TEA Party movement.

32. Defendant Budd objected to Plaintiffs’ TEA Party banner because he considers the TEA Party to be too political and too controversial.

33. On July 27, 2010, Plaintiffs, through counsel, sent a letter to Defendant Budd, demanding that Defendants reverse their unconstitutional restriction on Plaintiffs’ right to freedom of speech.

34. Later that same day (July 27, 2010), Defendants, through counsel, responded to Plaintiffs’ letter. In their response, Defendants reversed their prior decision and permitted Plaintiffs to display their banner.

35. In their response letter, Defendants stated that there was no “formal policy” on sign displays in the City parks, that they “acknowledge that without a formal policy, despite past practice, to now disallow the display of a ‘political’ sign would arguably appear to be content-based discrimination,” and that “[a] formal policy on displays in the city parks will soon be forthcoming.”

36. As a result of Defendants' letter reversing their prior ban on Plaintiffs' speech, Plaintiffs promptly displayed their TEA Party banner. The banner was displayed without incident, and the TEA Party was held at the park on July 31, 2010, as scheduled.

37. As promised in their response letter, Defendants began developing a "formal policy" on the display of signs in the City parks.

38. On or about November 2, 2010, Defendant Budd sent a memorandum to "Mayor Wallace and Council members," recommending "the City Council . . . enact a formal policy *forbidding the posting of all signs and banners in any city park.*" (emphasis added). Defendant Budd justified his recommendation by citing to "administrative headaches" and "comments about the banners affecting the natural beauty of the park."

39. In his memorandum, Defendant Budd stated, "Without a formal, written policy there is no official consistency as to the display of banners, at the Four Corners or in other city parks. The City Attorney's office has advised that it is not constitutionally possible to regulate the display of banners *as to who is allowed to display banners or as to the content of any display.* Essentially, the City must allow all banners or no banners." (emphasis added).

40. Accordingly, based on Defendant Budd's reasoning, because Defendants could not prohibit just Plaintiffs' TEA Party banners and signs, he believed that it was best to prohibit all banners and signs in the City's parks.

41. To facilitate the enactment of his proposed policy, Defendant Budd attached to his memorandum "a Resolution for [their] consideration." The resolution was entitled, "Resolution No. 10-31."

42. The City accepted Defendant Budd's recommendation. As a result, Resolution No. 10-31 "was duly adopted at a regular meeting of the City Council of the City of Coldwater at

which a quorum was present on [the] 8th day of November, 2010.” The vote of the City Council was 4 in favor and 4 against, with the City mayor casting the deciding vote to officially adopt the resolution.

43. Resolution No. 10-31 states in full as follows (emphasis added):

WHEREAS, the “Four Corners Parks” at the main intersection in the City of Coldwater, at Marshall Street and Chicago Street have been used, from time to time, for the display of banners promoting various activities, organizations, and gatherings; and

WHEREAS, the City of Coldwater has never adopted a policy regarding such displays; and

WHEREAS, the Council of the City of Coldwater has determined that, in the interest of beautifying the Four Corners Parks area, and to maintain the historical appearance and integrity thereof, display of banners in the Four Corners Parks should not be allowed:

NOW THEREFORE, be it

RESOLVED that hereafter ***the display of banners or other signs of any type or description whatsoever*** in the Four Corners Parks in the City of Coldwater ***is hereby forbidden***.

44. By its very terms, Resolution No. 10-31 does not limit its reach to just signs and banners that might be displayed on the two sets of permanent poles erected by the City—poles which the City has since removed. Instead, it forbids “the display of banners or other signs ***of any type or description whatsoever***” at Four Corners Park. (emphasis added).

45. By its very terms, Resolution No. 10-31 prohibits the display of all signs and banners, including handheld signs, banners, flags, and posters “of any type or description” at Four Corners Park.

46. By its very terms, Resolution No. 10-31 prohibits the display of all banners, including the American flag, the Gadsden flag, and any other similar sign or display at Four Corners Park.

47. By its very terms, Resolution No. 10-31 prohibits the display of Plaintiffs' political signs, such as the signs displayed during their political assemblies, meetings, and rallies, including their TEA Parties, at Four Corners Park.

48. By its very terms, Resolution No. 10-31 prohibits Plaintiffs from displaying at any time their banners advertising their TEA Party events at Four Corners Park, including during the TEA Party itself.

49. Because Defendants adopted Resolution No. 10-31, Plaintiffs are no longer permitted to engage in political speech through the display of "banners and other signs," including handheld signs, banners, flags, and posters, at the Four Corners Park, causing irreparable harm.

50. Plaintiffs want to continue to engage in political speech through the display of banners and other signs, including handheld signs, banners, flags, and posters, during their political assemblies, meetings, and rallies, including their TEA Parties, held at the Four Corners Park. However, Resolution No. 10-31 "forbid[s]" Plaintiffs from doing so.

CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

51. Plaintiffs hereby incorporate by reference all stated paragraphs.

52. By reason of the aforementioned Resolution No. 10-31, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to engage in political speech in a traditional public forum in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

53. Resolution No. 10-31 burdens substantially more speech than is necessary to further Defendants' interests; it is not narrowly tailored to serve a significant government interest; and it does not leave open ample channels of communication for Plaintiffs to meaningfully and effectively express their political message in violation of the Free Speech Clause of the First Amendment.

54. Resolution No. 10-31 was proposed and enacted to prohibit Plaintiffs from displaying their political message based on its content and viewpoint in that Defendants believed that Plaintiffs' speech was too political and too controversial.

55. Resolution No. 10-31 is overbroad in violation of the Free Speech Clause of the First Amendment.

56. The enforcement of Defendants' speech restriction violates Plaintiffs' rights protected by the Free Speech Clause of the First Amendment.

57. Defendants will seek to enforce their speech restriction against Plaintiffs at future political assemblies, meetings, and rallies, including TEA Parties, held at Four Corners Park in the City.

58. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this court:

A) to declare that Defendants violated Plaintiffs' constitutional rights as set forth in this Complaint;

- B) to permanently enjoin Resolution No. 10-31 as set forth in this Complaint;
- C) to award Plaintiffs nominal damages;
- D) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;
- E) to grant such other and further relief as this court should find just and proper.

Dated: April 7, 2011.

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq. (P62849)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
rmuise@thomasmore.org
(734) 827-2001