

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KEITH FANGMAN and
PAUL D. GRAVES, Jr.
C/O Gerhardstein & Branch, LPA
432 Walnut Street
Suite 400
Cincinnati, Ohio 45202

Individually and on behalf of all
other similarly situated persons

Plaintiffs,

vs.

CITY OF CINCINNATI,

Defendant

Case No. **1:08 CV 702**

Judge **J. BARRETT**

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

(Class Action)

MR
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FILED
JAMES BONINI
CLERK

I. PRELIMINARY STATEMENT

1. This civil rights case challenges the gag on political speech imposed on employees of the City of Cincinnati. Plaintiffs are political opposites. Keith Fangman supports John McCain in the race for United States President; Paul D. Groves, Jr. supports Barack Obama in the race for United States President. They also disagree on many of the other candidates on the fall 2008 ballot. They share however a desire, *as private citizens*, to express their support for the candidates and issues of their choice by donating funds and distributing campaign literature. They do not seek to engage in this conduct at work. They only seek to engage in this conduct in their private lives. They refuse to sit on the sidelines during this historic election. The City Charter and No. 2.2 of the City Human Resources Policies bar Plaintiffs from engaging in this expressive activity. Even after amendments were rushed into place at 5:00 on October 7, 2008,

the political activity restrictions on city employees are more severe than the restrictions on other federal and state government workers in Ohio. Plaintiffs seek declaratory and injunctive relief for the class under the First and Fourteenth Amendments to the United States Constitution.

II. JURISDICTION AND VENUE

2. Jurisdiction over the federal claims is conferred on this Court by 28 U.S.C. §1331 and §1343(3) and (4). Venue is proper under 28 U.S.C. §1391.

III. PARTIES

3. Plaintiff Keith Fangman is a resident of Cincinnati, Ohio and an employee of the City of Cincinnati.

4. Plaintiff Paul D. Groves, Jr. is a resident of Cincinnati, Ohio and an employee of the City of Cincinnati.

5. Defendant City of Cincinnati is a unit of local government organized under the laws of the state of Ohio.

IV. CLASS ACTION ALLEGATIONS

6. This action is brought, and may be properly maintained, as a class action under the provisions of Rules 23(a) and 23 (b) (2) of the Federal Rules of Civil Procedure.

Plaintiffs bring this class action on behalf of themselves and all others similarly situated.

The members of the class are as follows:

All employees of the City of Cincinnati other than elected officials or those in the Legislative Service.

7. The number of class members is not known with precision but exceeds thousands of individuals. The class is so numerous that joinder of all members is impracticable.

8. The claims of the plaintiffs are typical of the claims of the class because plaintiff members and all class members will sustain and continue to suffer injury arising from defendants' wrongful conduct as alleged herein.

9. The representative plaintiffs will fairly and adequately protect the interests of the members of the class. Proposed class counsel is experienced in the prosecution of class actions, including cases arising from the deprivation of civil rights, cases regarding government misconduct, voting rights and complex civil litigation.

10. Defendants have acted, or refused to act, on grounds generally applicable to the class, thereby making final injunctive and corresponding declaratory relief appropriate with respect to the class.

V. FACTS

A. Plaintiffs Seek to Engage in Expressive Activity

11. Plaintiffs are both city employees. They are not elected and they do not serve in the office of a councilmember or otherwise serve in the Legislative Service.

12. Keith Fangman seeks to donate funds to the John McCain presidential campaign.

13. Paul D. Groves, Jr. seeks to donate funds to the Barack Obama presidential campaign.

14. Plaintiffs also seek the opportunity to donate funds to other partisan political candidates on the fall 2008 ballot. These include candidates for federal office: the

United States House of Representatives; candidates for statewide office: the Ohio Attorney General, the Ohio Supreme Court, the Ohio State Senate, The Ohio State House of Representatives; and candidates for County Office: Hamilton County Commissioner; Sheriff, Recorder, Treasurer, Engineer, Coroner, Court of Appeals, and Common Pleas Court.

15. Additionally, Plaintiffs seek the opportunity to distribute campaign literature for the candidates they support.

16. All of the donations and distribution of literature described above would be done by plaintiffs in their capacity as individual private citizens and would not be pursued while on duty or at the workplace.

B. The City Prohibits Plaintiffs from Donating to Campaigns and Distributing Literature

17. The Cincinnati City Charter prohibits all city employees in the administrative service from donating money for any political party or candidate:

Article V. Section 4. No person in the administrative service shall directly or indirectly give, solicit or receive, or in any manner be concerned in giving, soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate.

18. Cincinnati Human Resources Policy 2.2 also prohibits the plaintiffs from engaging in the expressive activity they seek to pursue. Specifically, the policy states that, "No City of Cincinnati employee, other than elected officials or those in the Legislative Service, may participate in partisan political activity...[including] giving...any ...contribution to any candidate for elective office...[and] distribution of campaign literature." This policy was amended on October 7, 2008, in response to the concerns raised by plaintiffs. Specifically, the policy now permits city employees to

make “voluntary financial contributions to candidates for office in non-Ohio federal elections.” The ban on distributing campaign literature was narrowed to “partisan campaign literature.” See Policy No. 2.2, Attached to Gerhardstein Declaration.

19. Thus under the amended policy the plaintiffs, in their private, individual capacities, can now donate to their presidential candidates but cannot distribute the literature of their candidates. Nor can the plaintiffs donate to or distribute the literature of Federal Congressional candidates, statewide candidates or county candidates.

20. The Charter and the Human Resources policy are the policy of the City as it applies to the expressive activity of the plaintiffs and the members of the class.

21. Both the Article V, Section 4 of the Charter and Policy 2.2 of the Human Resources policies are overbroad and otherwise unconstitutional on their face and as applied to the conduct of the plaintiffs.

22. The City limits on the political expression of its employees as set out above are more restrictive than comparable restrictions that apply to employees of the federal government and the state of Ohio.

23. The City limits on the political expression of its employees as set above are not narrowly tailored to serve a legitimate governmental interest.

C. Need for Injunction

24. There is no adequate remedy at law. The employees of the City of Cincinnati have a right to donate to and distribute literature for candidates for offices that are not Cincinnati offices. Every employee impacted by the Charter and the Human Resources Policies is denied his/her rights, deterred and intimidated, and faces irreparable harm. Moreover, the public deserves a system wherein all citizens are free to participate to the

fullest extent allowed by law. The need is urgent for court action on this pressing problem. Only prompt action by this federal court ordering declaratory and injunctive relief will serve the public interest.

VI. CLAIM FOR RELIEF

First Claim – 42 U.S.C. §1983 - United States Constitution

25. Defendants, acting under color of law, have violated rights secured to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution including the right to free expression, the right of association, the right to due process of law, and the right to equal protection under the law.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this court:

- A. Certify this action as a class action pursuant to Fed. R.Civ. Proc. 23(a) and (b) (2);
- B. Issue a declaratory judgment that the practices at issue in this case violate the constitutional and statutory rights of the class members;
- C. Award compensatory damages to the class representatives in an amount to be shown at trial;
- D. Issue a preliminary and permanent injunction against the defendants and all those acting in concert prohibiting the practices at issue in this action;
- E. Award to plaintiffs reasonable costs, expenses and attorney fees;

F. Award such other and further relief as this court shall deem just and reasonable.

Respectfully submitted,

/s/ Alphonse A. Gerhardstein
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