

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

JEFFERY RANK and
NICOLE RANK,

Plaintiffs,

v.

CIVIL ACTION NO. 2:04-0997
Hon. John T. Copenhaver

TOM HAMM,
CHRIS SMITH,
TIM M. JOHNSON,
SERGEANT H.E. SHAVER,
OFFICER G. SCOTT FERNATT,
TROOPER JOHN HAMILTON,
SERGEANT H.P. EPPERHART,
AARON SPORCK,
GREGORY J. JENKINS, and
BARON BELL,

Defendants.

THIRD AMENDED COMPLAINT

1. This is a Complaint seeking damages for violation of the Plaintiffs' First Amendment rights. Defendants had the Plaintiffs arrested at a public event involving the President of the United States based on the content and viewpoint of Plaintiffs' speech.

Jurisdiction and Venue

2. This court has jurisdiction pursuant to 28 U.S.C. § 1331. Remedies are provided by 42 U.S.C. § 1983.

3. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events that form the basis for this Complaint primarily occurred in this district.

Parties

4. Plaintiffs JEFFERY RANK and NICOLE RANK are residents of the United States of America. They were residents of the State of West Virginia at the time of the events that are subject of this complaint. They are currently residents of the State of Texas.

5. Defendant TOM HAMM was, at the time of Plaintiffs' arrest, an employee of Congresswoman Shelley Moore Capito, and was serving as a White House Event Staff Member. Defendant Hamm is sued in his individual capacity.

6. Defendant CHRIS SMITH was, at the time of Plaintiffs' arrest, serving as a White House Event Staff Member, according to the police reports. Defendant Smith is sued in his individual capacity.

7. Defendant OFFICER TIM M. JOHNSON is an officer with the West Virginia Department of Military Affairs and Public Safety (Capitol Police). Defendant Johnson is sued in his individual capacity.

8. Defendant SERGEANT H.E. SHAVER is an officer with the West Virginia Department of Natural Resources. Defendant Shaver is sued in his individual capacity.

9. Defendant OFFICER G. SCOTT FERNATT is an officer with the West Virginia Department of Military Affairs and Public Safety (Capitol Police). Defendant Fernatt is sued in his individual capacity.

10. Defendant TROOPER JOHN HAMILTON is a Trooper with the West Virginia State Police. Defendant Hamilton is sued in his individual capacity.

11. Defendant SERGEANT H.P. EPPERHART was, at the time of Plaintiffs' arrest, an officer with the West Virginia Department of Military Affairs and Public Safety (Capitol Police). Defendant Epperhart is sued in his individual capacity.

12. Defendant AARON SPORCK was, at the time of Plaintiffs' arrest, an employee in the congressional office of Congresswoman Shelley Moore Capito, and was serving as a White House Event Staff Member. Defendant Sporck is sued in his individual capacity.

13. Defendant GREGORY J. JENKINS was, at the time of Plaintiffs' arrest, the Director of the White House Office of Presidential Advance and a Deputy Assistant to George W. Bush, the President of the United States of America. The Office of Presidential Advance is in charge of organizing and directing visits by the President of the United States outside the White House complex in Washington D.C. Defendant Jenkins is sued in his individual capacity.

14. Defendant BARON BELL was, at the time of Plaintiffs' arrest, working for the White House Office of Presidential Advance, in either a paid or volunteer capacity. Defendant Bell is sued in his individual capacity.

Facts

15. On Sunday, July 4, 2004, President Bush made a visit to the City of Charleston, Kanawha County, West Virginia in order to give a Fourth of July speech outdoors on the grounds of the state capitol. This was an official, taxpayer-funded appearance by the President.

16. The White House Office of Presidential Advance (“OPA”) is an executive-branch office responsible for designing and implementing the policies and procedures governing admissions requirements and audience-member conduct at every public event at which the President of the United States of America appears in his official capacity. As Director of OPA, Defendant Jenkins establishes and is responsible for those policies and procedures.

17. OPA’s national policies and procedures were implemented at the July 4, 2004 event at the West Virginia Capitol. Individuals who wished to hear the President speak could gain admission to the West Virginia Capitol grounds by ticket only. Defendant Bell was one of the OPA staffers assigned to implement the policies and procedures at this particular event.

18. On July 3, 2004, the Plaintiffs obtained for their use tickets numbered 115836 and 115848 granting them admission to the July 4, 2004 appearance of President Bush at the West Virginia State Capitol grounds. Plaintiff Nicole Rank obtained Plaintiffs’ tickets after receiving an e-mail through her employer, the Federal Emergency Management Agency (FEMA), offering tickets to hear the President speak. She also saw a notice at work about receiving tickets. An e-mail message from a FEMA “Congressional Liaison staff member” stated “there is no specified dress code.” Nicole Rank signed up for two tickets. When she signed up, she was asked only for her name, address, and social security number. Jeffery Rank picked up the tickets at Capital High School in Charleston. When he picked up the tickets, he was not asked about their political party affiliation.

19. These tickets specifically advised the Plaintiffs that “patrons will be seated on a first come, first served basis.” Neither the ticket itself, nor the people who handed out the tickets, said that persons attending the event would be excluded if they were critical of the President.

20. On July 3, 2004, the Plaintiffs obtained copies of a document titled "The Visit of the President to Charleston, West Virginia July 4, 2004 EVENT INFORMATION."

21. This "EVENT INFORMATION" included a map showing parking areas and points of entry to the event. Neither this map nor any other information available to Plaintiffs showed any restriction of any kind on the location of persons who wished to exercise their free speech right to express disagreement with the policies of President Bush.

22. On the evening of July 3, 2004, Defendant Bell met with several members of the White House Event Staff and gave them instructions about their responsibilities for the event. Defendant Sporck was present at that meeting. Defendant Bell told the White House Event Staff that certain categories of expression were prohibited and that Event Staff were to order any audience member found displaying a prohibited message to cover up that message or leave the event.

23. On the morning of July 4, 2004, Defendant Epperhart met with local law enforcement officers who would be working the event and gave them instructions about their duties at the event. At this meeting, Defendant Epperhart told the officers that all members of the public attending were required to have tickets to enter and to remain in attendance. Epperhart further informed the officers that only White House Event Staff were authorized to issue or revoke tickets, and that the officers were to follow the instructions of White House Event Staff regarding who may enter and who may remain in attendance at the event.

24. On July 4, 2004, the Plaintiffs presented themselves for and were granted admission to the West Virginia State Capitol grounds to attend the appearance and speech of President Bush.

25. After being admitted to the West Virginia State Capitol grounds to attend the appearance and speech of President Bush, but well before the arrival of the President, the Plaintiffs removed their outer shirts to display an expression of their disagreement with the policies of President Bush. The front of both Plaintiffs' t-shirts bore the international "no" symbol (a circle with a diagonal line across it) superimposed over the word "Bush." Both shirts also displayed on the left sleeve a small photograph of President Bush with the international "no" symbol superimposed over it, and on the right sleeve a "Kerry" button. The message on the back of Nicole Rank's t-shirt was "Love America, Hate Bush." On the back of Jeffery Rank's shirt was the message "Regime Change Starts at Home."

26. As the Plaintiffs stood peacefully on the public grounds of the West Virginia State Capitol awaiting the appearance of President Bush, Defendants Hamm, Smith, and Sporck approached Plaintiffs. Defendants Hamm and Smith are described in the police reports of the plaintiffs' arrest as "White House Staff" or "White House Event Staff member." Defendants Hamm and Sporck are pictured in photographs taken during Plaintiffs' encounter with Event Staff and law enforcement on July 4, 2004, and they have admitted being involved in that encounter. Defendants Hamm, Smith, and Sporck were wearing badges identifying them as "EVENT STAFF." As White House Event Staff, Defendants Hamm, Smith, and Sporck were acting under the supervision and pursuant to the instructions of Defendants Bell and Jenkins.

27. Defendant Hamm, Defendant Smith and/or Defendant Sporck told Plaintiffs that they could not remain on the grounds while wearing their t-shirts. Defendant Hamm, Defendant Smith and/or Defendant Sporck ordered Plaintiffs to remove or cover their t-shirts or to leave the Capitol grounds.

28. Defendants Johnson, Shaver, Fernatt, and Hamilton were instructed by the White House Event Staff to require plaintiffs to remove or cover their t-shirts or, if they refused, to arrest them and remove them from the grounds of the Capitol. Defendants

Johnson, Shaver, Fernatt, and Hamilton were specifically informed by White House Event Staff that Plaintiffs' tickets had been revoked.

29. Defendants Johnson, Shaver, Fernatt, and Hamilton complied with the orders of White House Event Staff because of Defendant Epperhart's previous instructions that White House Event Staff had the authority to revoke tickets and that no audience member was permitted to remain on the Capitol grounds during the event without a ticket.

30. When Plaintiffs refused to remove or cover their t-shirts, Defendants Johnson, Shaver, Fernatt, and Hamilton caused the Plaintiffs to be arrested by Shaver and a police officer from the city of Charleston, and to be handcuffed, led from the Capitol grounds through a large crowd of people, jailed and charged with trespassing by local authorities.

31. The audience at the July 4, 2004, Presidential speech included individuals who were wearing political paraphernalia expressing support for the President and his policies and who were not arrested, asked to leave, asked to cover their political messages, or otherwise harassed by law enforcement or White House Event Staff because of their expression.

32. On numerous other occasions throughout the country over the past several years, individuals have been excluded or ejected from Presidential appearances because they expressed a viewpoint disagreeing with the President. For example, in LaCrosse, Wisconsin, ticket holders in line to hear the president speak had to unbutton their shirts before they could get inside. Someone who, like the plaintiffs here, was wearing a t-shirt critical of the President, had her ticket ripped and was ejected by security officials. In Denver, two ticket holders were ejected from a Presidential appearance because they arrived in a car bearing a bumper sticker expressing disagreement with President Bush's foreign policy. In Fargo, North Dakota, several dozen individuals were placed on a "do not admit list" of those forbidden to attend a Presidential event; most of the individuals

on the list belonged to a liberal organization, and some had written letters to the editor opposing the President's policies. And in Tucson, Arizona, a student was barred from a Presidential forum on social security because he was wearing a Young Democrats t-shirt.

33. The exclusion of plaintiffs by law enforcement at the direction of White House Event Staff was taken pursuant to a national policy that had been conveyed by the White House Office of Presidential Advance, through its staff, at a meeting on the evening of July 3.

34. As Defendant Hamm has acknowledged, the OPA policy that guided his actions concerning the Ranks on July 4, 2004, has been in effect at other Presidential visits.

35. Given the number of incidents in which individuals have been excluded or ejected from Presidential appearances because they expressed a viewpoint disagreeing with the President, the policy under which White House Event Staff were acting on July 4, 2004, is clearly a national policy.

36. The OPA policy prohibits individuals at official Presidential events from displaying messages expressing disagreement with the President or his policies but permits displaying messages expressing support for the President or his policies. Thus, many audience members displaying pro-Bush paraphernalia were not excluded from the July 4, 2004, Presidential appearance. Similar viewpoint-based exclusions from Presidential events have occurred around the country.

37. In the alternative, the OPA policy prohibits individuals at official Presidential events from displaying any "political paraphernalia." Defendants Hamm and Sporck have both described the policy in these terms. Defendants Hamm and Sporck suggested the policy would prohibit shirts such as the Ranks' that mention a politician or party, but would not prohibit a shirt that says "I Support (or Oppose) Our Troops in Iraq."

38. As head of OPA, Defendant Jenkins was responsible for the promulgation of the policy that was conveyed to Event Staff by Defendant Bell and pursuant to which White House Event Staff acted in triggering the arrest of the Plaintiffs and their removal from the event.

39. The criminal charges against the Plaintiffs were subsequently dismissed.

40. The Mayor and the City Council of Charleston publicly apologized to the Plaintiffs for having participated in the arrest of the Plaintiffs.

41. Plaintiffs remained in custody for one to two hours. During that time they were transported, handcuffed, in a criminal transportation vehicle to the Charleston Police Department. They were kept handcuffed while they waited in a holding cell to be booked, photographed, fingerprinted, and, finally, released.

42. Plaintiff Nicole Rank was temporarily suspended from her work with FEMA while the charges were still pending against her and lost income as a result.

43. Plaintiffs suffered emotional harm as a result of their arrest and the violation of their First Amendment rights.

CAUSE OF ACTION

44. Defendants' actions violated Plaintiffs' First Amendment rights to peacefully assemble, speak, and petition for redress of grievances, which rights are guaranteed by the First and Fourteenth Amendments of the United States Constitution.

RELIEF

Based upon the foregoing, Plaintiffs respectfully pray that this Court will:

A. Declare that Defendants' actions that led to the exclusion of the Plaintiffs because of their speech were in violation of the First and Fourteenth Amendments of the United States Constitution;

B. Grant Plaintiffs damages for violation of their rights under the First and Fourteenth Amendments of the United States Constitution and for the emotional harm and lost income they suffered as a result of this incident;

C. Grant Plaintiffs such other relief as they may be entitled to; and

D. Award Plaintiffs reasonable attorneys' fees and costs.

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NICOLE RANK

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