

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. _____

GREGORY J. JENKINS,
Deputy Assistant to the President of the
United States and Director of the
White House Office of Presidential Advance;
W. RALPH BASHAM, Director of the United
States Secret Service; JOHN DOES 1-2;
JOHN DOES 3-4,

Defendants.

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. For the state defendants, 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. The Plaintiffs JEFFERY RANK and NICOLE RANK are residents of the United States of America and the State of West Virginia.

5. The Defendant, GREGORY J. JENKINS, is a Deputy Assistant to George W. Bush, the President of the United States of America and the Director of the White House Office of Presidential Advance. 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.

6. The Defendant, W. RALPH BASHAM, is the Director of the United States Secret Service of the Department of Homeland Security. The Secret Service is the federal agency charged with, among other assignments, protecting the President of the United States of America from injury or death. Defendant Basham is sued in his individual capacity.

7. Defendants JOHN DOE 1 and 2 are individuals whose identity is not currently known by the Plaintiffs. Upon information and belief, they are employees of either the White House Office of Presidential Advance or the Secret Service. They acted as agents of either defendant JENKINS or defendant BASHAM or both of them. They are sued in their individual capacities.

8. Defendants JOHN DOE 3 and 4 are individuals whose identity is not currently known by the Plaintiffs. Upon information and belief, they are law enforcement employees of the State of West Virginia. They are sued in their individual capacities.

Facts

9. The Office of Presidential Advance and the Secret Service are responsible for the structure of activities at each location visited by the President of the United States of America in his official capacity.

10. 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.

11. On Sunday, July 4, 2004, the Office of Presidential Advance and the Secret Service, acting by and through staff, coordinated the arrangements with respect to President Bush's appearance.

12. In order to coordinate attendance at President Bush's appearance by individuals who wished to hear him speak, the Defendants caused to be designed systems and procedures for that visit that included admission to the West Virginia Capitol grounds by ticket and in accordance with certain written event information that was to be distributed to members of the public who obtained tickets for this event.

13. On July 3, 2004, the Plaintiffs, following procedures caused to be established by the Defendants, 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.

14. 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.

15. On July 3, 2004, the Plaintiffs, following procedures caused to be implemented by the Defendants, obtained copies of a document titled “The Visit of the President to Charleston, West Virginia July 4, 2004 EVENT INFORMATION.”

16. 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.

17. 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.

18. 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.”

19. On July 4, 2004, as the Plaintiffs stood peacefully on the public grounds of the West Virginia State Capitol awaiting the appearance of President Bush, one or more of the John Doe Defendants approached Plaintiffs and advised them that they could not remain on the grounds while wearing t-shirts critical of the President. John Doe defendants 1 and 2 were two young men who were wearing badges identifying them as “EVENT STAFF” and who can be identified by photographs taken at the time of the incident.

20. Upon information and belief John Does 3 and 4 were also present at the time of the incident and press reports and photographs from the event indicate that they may have played a role in the incident.

21. When Plaintiffs refused to remove or cover their t-shirts, one or more of the John Doe defendants caused the Plaintiffs to be arrested by police from the city of Charleston, handcuffed, led from the Capitol grounds through a large crowd of people, jailed and charged by local authorities with the commission of a crime that did not exist.

22. Upon information and belief, the actions taken by one or more of the John Doe defendants with respect to the Plaintiffs were taken pursuant to policies established by Defendants Jenkins and/or Basham. Those policies did not include excluding from the event persons who wore t-shirts and pins supportive of the President.

23. The charges against the Plaintiffs were subsequently dismissed.

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

25. 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.

26. Plaintiff Nicole Rank was temporarily suspended from her work with FEMA while the charges were still pending against her.

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

CAUSE OF ACTION

23. Defendants' actions have 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 the Defendants' actions and policies that led to the exclusion of the Plaintiffs because of their speech were in violation of the First Amendment of the United States Constitution; and,

B. Grant Plaintiffs damages for violation of their rights under the First Amendment of the United States Constitution and for the emotional harm 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 attorney's fees and costs.

JEFFERY RANK and
NICOLE RANK

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