

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

BART MCQUEARY)
)
 Plaintiff)
)
 v.)
) Civil Action No. _____
 GREGORY D. STUMBO, in his Official)
 Capacity as Attorney General of the)
 Commonwealth of Kentucky)
)
 Defendant)
 _____)

COMPLAINT

I. Preliminary Statement

1. This is a suit for injunctive and declaratory relief under 42 U.S.C. § 1983, seeking to protect rights secured by the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiff, Bart McQueary (McQueary), is a resident of Harrodsburg, Kentucky. In conjunction with the Westboro Baptist Church, of which he is a supporter, McQueary has protested at funerals in the past and wishes to do so in the future. He alleges that his right to protest at future funerals has been hindered by enactment of Sections 5(1)(b) and (c) of House Bill 333 (HB 333) and Senate Bill 93 (SB 93). Specifically, plaintiff alleges that Sections 5(1)(b) and (c) are overbroad criminalizations of speech, impermissibly condition expression upon the approval of private individuals, and constitute prior restraints on speech.

II. Jurisdiction and Venue

3. The Court has jurisdiction under 28 U.S.C. § 1331, which provides for original district court jurisdiction over cases presenting federal questions.

4. Venue is proper in the Eastern District of Kentucky under 28 U.S.C. § 1391, because the defendant is headquartered there.

III. Parties

5. Plaintiff Bart McQueary resides in Harrodsburg, Kentucky. He is a supporter of the Westboro Baptist Church and engages in its practice of protesting at funerals.

6. Defendant Greg Stumbo is the Attorney General of the Commonwealth of Kentucky and, as such, is the Commonwealth's chief law enforcement officer.

IV. Factual Allegations

7. At all relevant times, defendant has acted under color of state law.

8. On March 27, 2006, HB 333 and SB 93 became law. The bills are essentially identical¹ and were passed largely in response to the Westboro Baptist Church: "The measure is aimed at members of the Westboro Baptist Church of Topeka, Kan., who have been holding demonstrations at funerals for soldiers killed in Iraq. ... [T]he protesters claim U.S. soldiers are dying because God is punishing America for tolerating homosexuality." Associated Press, *Kentucky enacts law against protesters who target military funerals* (March 27, 2006), available at www.kentucky.com/mld/kentucky/14198748.htm.

¹ The only obvious difference is that HB 333 Section 1(1)(b)4 reads "[b]uilding in which a funeral or memorial service is being conducted," whereas SB 93 Section 1(1)(b)4 reads "[f]uneral and memorial service."

9. Sections 5(1)(b) and (c) of HB 333 and SB 93 call for the creation of a new section of KRS chapter 525 to read in pertinent part:

- (1) A person is guilty of interference with a funeral when he or she at any time on any day: . . .
 - (b) Congregates, pickets, patrols, demonstrates, or enters on that portion of a public right-of-way or private property that is within three hundred (300) feet of an event specified in paragraph (a) of this subsection; or
 - (c) Without authorization from the family of the deceased or person conducting the service, during a funeral, wake, memorial service, or burial:
 1. Sings, chants, whistles, shouts, yells, or uses a bullhorn, auto horn, sound amplification equipment, or other sounds or images observable to or within earshot of participants in the funeral, wake, memorial service, or burial; or
 2. Distributes literature or any other item.

(2) Interference with a funeral is a Class B misdemeanor.

10. McQueary became a supporter of the Westboro Baptist Church in 2001. He has picketed with the Westboro Baptist Church on three occasions: in Lexington, Kentucky on June 29, 2004; at a funeral in Bowling Green, Kentucky on June 24, 2005; and most recently on the grounds of the State Capitol on February 8, 2006.

11. McQueary believes that protesting at funerals is an effective way to convey the message of the Westboro Baptist Church.

12. McQueary wishes to protest at future funerals in conjunction with the Westboro Baptist Church, but fears being prosecuted for violating Sections 5(1)(b) and (c) of HB 333 and SB 93.

13. Specifically, McQueary wishes to congregate, picket, demonstrate, or enter on that portion of a public right-of-way that is within three hundred feet of a funeral, wake, memorial service, or burial, in a manner that does not, and is not intended to, disrupt the event.

14. McQueary further wishes to make sounds and display images observable to or within earshot of funeral participants, in a manner that does not, and is not intended to, disrupt the funeral. McQueary wishes to make these sounds and display these images without seeking or obtaining authorization from the family of the deceased or person conducting the funeral, wake, memorial service, or burial.

15. Finally, McQueary wishes to distribute literature in a non-disruptive manner without first obtaining the permission of the family of the deceased or person conducting the funeral, wake, memorial service, or burial.

16. McQueary is suffering and, without injunctive relief from this Court, will continue to suffer irreputable harm for which he has no adequate remedy at law.

V. Claims for Relief

A. First Cause of Action

17. Sections 5(1)(b) and (c) are unconstitutional prior restraints on speech. They are not content-neutral time, place, and manner regulations of speech. In addition, they are not narrowly tailored to serve a significant government interest and do not leave open alternative channels for communication.

18. Sections 5(1)(b) and (c) thus abridge McQueary's freedom of speech in violation of the First and Fourteenth Amendments to the United States Constitution.

B. Second Cause of Action

19. Section 5(1)(b) is an overbroad criminalization of speech, in that it creates an excessively large area (radius of 300 feet around a funeral, wake, memorial service, or burial) where expressive behavior, such as protesting, is prohibited.

20. Section 5(1)(b) is also overbroad in that it criminalizes more speech than needed to avoid disruption (such as merely entering on land or congregating within 300 feet of a funeral for purposes conversing with another).

21. Section 5(1)(b) thus abridges McQueary's freedom of speech in violation of the First and Fourteenth Amendments to the United States Constitution.

C. Third Cause of Action

22. Section 5(1)(c) impermissibly makes auditory and visual expression on public property contingent upon the approval of a private party. Specifically, Section 5(1)(c)1 criminalizes singing, chanting, shouting or displaying images on public property without first obtaining the approval of the family of the deceased or person conducting the service. Section 5(1)(c)2 criminalizes the distribution of literature on public property without first obtaining the approval of the family of the deceased or person performing the service.

23. Section 5(1)(c) thus abridges McQueary's freedom of speech in violation of the First and Fourteenth Amendments to the United States Constitution.

D. Fourth Cause of Action

24. Section 5(1)(c)1 is an overbroad criminalization of speech, in that it forbids singing, chanting, or displaying images on public property, even if not disruptive, simply because it occurs within earshot or eyesight of funeral participants.

25. Section 5(1)(c)1 thus abridges McQueary's freedom of speech, in violation of the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the plaintiff requests that the Court:

1. Declare Sections 5(1)(b) and (c) of HB 333 and SB 93 unconstitutional.
2. Issue preliminary and permanent injunctions enjoining defendant, his employees, agents, successors, and all others acting in concert or participation with him, from enforcing Sections 5(1)(b) and (c) of HB 333 and SB 93.
3. Award plaintiff his costs, including reasonable attorney fees, pursuant to 42 U.S.C. § 1988; and
4. Grant any additional relief to which the plaintiff may be entitled.

Lili S. Lutgens, Staff Attorney
David A. Friedman, General Counsel
ACLU of Kentucky
315 Guthrie Street, Suite 300
Louisville, KY 40202
502-581-9746

Counsel for Plaintiff

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I make the following declaration under penalties of perjury:

I verify that I have read the complaint in this case and that the facts alleged in it are true, to the best of my knowledge, information and belief.

Bart McQueary

Date