

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

PATRICIA LYNN GOTHARD,

Plaintiff,

Case No. 5:17-CV-299

vs.

TOWN OF WAUSAU, a Florida
Municipal Corporation; and TOWN OF
WAUSAU FIRE CHIEF SAMUEL
RUDD, individually,

Defendants.

COMPLAINT

COMES NOW, the Plaintiff, PATRICIA LYNN GOTHARD, (hereinafter “GOTHARD”), by and through her undersigned counsel, sues Defendants, the TOWN OF WAUSAU, (hereinafter “TOWN”) and SAMUEL RUDD, (hereinafter “RUDD”) individually, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 42 U.S.C. § 1983 and 1988 and the First and Fourteenth Amendments to the United States Constitution, for claims which are, individually, in excess of Seventy-Five Thousand Dollars (\$75,000), exclusive of costs and interest.

2. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1343, given that this action seeks to redress the deprivation, under color of state law, of rights secured to Plaintiff by the First and Fourteenth Amendments to the United States Constitution.

3. Venue is appropriate in this court pursuant to 28 U.S.C. § 1391 because the violations of Plaintiff's rights occurred in Washington County, Florida within the Northern District of Florida.

PARTIES

4. Plaintiff, PATRICIA LYNN GOTHARD, is a natural person, a citizen of the United States, who at all material times herein did reside in Washington County, Florida.

5. The TOWN was and is a duly established municipality organized and existing under the laws of the State of Florida, located in Washington County, Florida.

6. Defendant SAMUEL RUDD is the Fire Chief for the TOWN and as such is an employee of the TOWN. Rudd is sued in his individual capacity.

FACTS COMMON TO ALL COUNTS

7. In 2016, Plaintiff was a candidate in the District 5 Washington County Commission election.

8. The TOWN of Wausau is within Washington County, Florida.

9. Each year, the TOWN holds its Annual Wausau Possum Festival.
10. This is a huge event, drawing more than 20,000 people to the TOWN.
11. The Wausau Fire Department along with the TOWN are in charge of holding this annual event.
12. As part of the Festival, the Fire Department creates a program book wherein the public can purchase ad space.
13. On May 16, 2016, Plaintiff learned that the Fire Department was soliciting ads from politicians and political candidates within the community.
14. That same day, Plaintiff went to the Fire Department and submitted her ad application and payment for \$120.00 for submission in the program book.
15. On May 24, 2016, the program book was submitted to Paul Goulding for printing.
16. As of May 24, 2016, there were numerous politicians and political candidates who had not yet paid for their ad submissions including, but not limited to, Lora Bell, Greg Wilson, Glenn Hess, Tray Hawkins, Alan Bush and John Harmon.
17. At least three ad submissions had not submitted payment by July 7, 2016.
18. The Wausau Possum Festival Program Book had not even gone to print as of July 7, 2016.

19. On July 11, 2017 Plaintiff received her returned check for her ad submission and her application.

20. When Plaintiff inquired as to the reason her check was returned, she was informed that Chief Sam RUDD refused to allow her ad to be printed in his book.

21. Plaintiff was the only District 5 candidate who was denied the ability to place an ad in the program book.

22. Chief RUDD's actions are a violation of Plaintiff's First Amendment rights.

23. There was no lawful basis for RUDD to ban Plaintiff's ad.

24. Plaintiff's advertisement was for the purposes of political commentary and public information.

COUNT I – VIOLATION OF THE FIRST AMENDMENT 42 U.S.C. § 1983
(Against Town)

25. GOTHARD incorporates herein paragraphs 1-24 by reference.

26. The First Amendment of the United States Constitution protects the “freedom of speech.” It is a fundamental principle of the First Amendment “that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.” *Packingham v. North Carolina*, 137 S.Ct. 1730, 1735.

27. Political advertisements are at the core of the First Amendment.

28. The TOWN created a traditional public forum because it accepted submissions for the Possum Day book from the general public.

29. The TOWN cannot discriminate against a single ad.

30. The TOWN's decision to reject GOTHARD's political advertisement but to allow other advertisements constitutes prohibited discrimination.

31. GOTHARD's sole ad submission for the TOWN's Possum Day book is protected expressive speech under the First Amendment because it contained no profanities, no obscenities, no insulting or fighting words that would by their very utterance inflict injury or incite an immediate breach of the peace.

32. TOWN and Defendant RUDD's actions in concert with one another to ban GOTHARD's ad from the TOWN's Possum Day book violated GOTHARD's First Amendment protections of Free Speech.

33. By allowing some ads to be included in the TOWN's Possum Day book, but prohibiting GOTHARD's, Defendants have arbitrarily and without statutory or other authority, suppressed one of the most sacred forms of free speech – political speech.

34. Plaintiff has retained the services of undersigned counsel to represent her in this action and she is obligated to pay undersigned counsel a reasonable attorney's fee.

WHEREFORE, Plaintiff demands damages in the amount proved in Court including compensatory damages and reasonable attorney's fees pursuant to 42 U.S.C. § 1988, plus court costs and any other relief that this Court deems proper. Plaintiff demands a trial by jury as to this count.

COUNT II – VIOLATION OF THE FIRST AMENDMENT 42 U.S.C. § 1983
(Against Rudd in his Individual Capacity)

35. Plaintiff incorporates paragraphs 1-24 herein by reference.

36. RUDD unlawfully silenced GOTHARD's exercise of her First Amendment right to political speech.

37. GOTHARD is entitled to punitive damages against RUDD, individually, as his conduct violated well-established Florida ethics laws, was clearly motivated by an evil and malicious intention to silence GOTHARD'S political speech, and he further acted recklessly and with a callous indifference towards the federally protected rights of GOTHARD.

38. Plaintiff has retained the services of undersigned counsel to represent her in this action and she is obligated to pay undersigned counsel a reasonable attorney's fee.

WHEREFORE, Plaintiff demands damages in the amount proved in Court including compensatory damages, punitive damages, and reasonable attorney's fees pursuant to 42 U.S.C. §1988, plus court costs and any other relief that this Court deems proper. Plaintiff demands a trial by jury as to this count.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. That process issue and this Court take jurisdiction over the case;
2. Judgment against the Defendants and for the Plaintiff awarding compensatory damages against Defendants and punitive damages against Defendant Rudd for the violation of laws enumerated herein;
3. Prejudgment interest on monetary recovery obtained pursuant to law;
4. Attorney's fees, statutory fees and costs pursuant to 42 U.S.C. § 1988;
5. Such other relief as may be necessary to effectuate the Court's judgment, or as the Court otherwise deems just and equitable.

Dated this 12th day of December, 2017.

Respectfully submitted,

/s/ **Tiffany R. Cruz**

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ATTORNEY FOR PLAINTIFF

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

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Plaintiff(s)

v.

Civil Action No. _____

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: