

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DON GOLDHAMER and ROBIN SCHIRMER,)
)
)
Plaintiffs,)
) Case No.
v.)
)
)
LT. NAGODE, CMDR. KEATING, OFFICER)
POHL, UNKNOWN POLICE OFFICERS and)
EMPLOYEES of the CITY OF CHICAGO,)
(individually and in their official)
capacities) and the CITY OF CHICAGO,)
)
Defendants.) JURY TRIAL DEMANDED

COMPLAINT

NOW COME Plaintiffs, DON GOLDHAMER and ROBIN SCHIRMER, by their attorneys, LOEVY & LOEVY, JEFFREY FRANK, and CHARLES NISSIM-SABAT and complaining of Defendants, LT. NAGODE, CMDR. KEATING, OFFICER POHL, UNKNOWN POLICE OFFICERS and EMPLOYEES of the CITY OF CHICAGO, and the CITY OF CHICAGO, state as follows:

Jurisdiction

1. This action is brought pursuant to 42 U.S.C. Section 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the First, Fourth and Fourteenth Amendments of the United States Constitution. This Court has jurisdiction under 28 U.S.C. Section 1331 and 1367.

Venue

2. This action properly lies in the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. 1391(b), as the events giving rise to Plaintiffs' claims occurred in the City of Chicago in this judicial district.

Factual Allegations

3. Plaintiff DON GOLDHAMER ("GOLDHAMER") is a 66 year-old resident of Oak Park, Illinois. For many years GOLDHAMER has been involved in numerous public rallies, marches, and other activities concerning various civil rights and political issues.

4. Plaintiff ROBIN SCHIRMER ("SCHIRMER") is a 54 year-old resident of Maywood, Illinois. For many years SCHIRMER has been involved in numerous public rallies, marches, and other activities concerning various civil rights and political issues.

5. On July 2, 2006, approximately a dozen individuals, including some 8 or 9 associated with the American Friends Service Committee, were present in the vicinity of a United States Armed Services recruiting booth at the Taste of Chicago event.

6. Certain of these individuals were handing out flyers and speaking to people concerning the role of the military and alternatives to military service.

7. SCHIRMER stood near the recruiting booth and held a sign that read "Chicago Is A Free Speech Zone."

8. GOLDHAMER went as an observer on behalf of the National Lawyers Guild because of problems in the past of Chicago police violating the rights of those exercising their First Amendment rights. He wore a red National Lawyers Guild cap.

9. After about an hour of peaceful leafleting on the public sidewalk about 10 to 15 feet from the military recruiting booth, two Chicago police officers arrived on the scene and told the leafleteers to "move away" with no explanation. They refused to identify to whom they reported.

10. Soon thereafter, a number of police officers, including Lt. Nagode, arrived. Nagode ordered patrol officers to form a line in front of the military recruiting booth.

11. Nagode told SCHIRMER and others to put their signs away, that they could not protest there, and that they had to go to a "free speech zone." SCHIRMER then folded her sign and put it in her purse, and then began to hand out leaflets.

12. GOLDHAMER asked Nagode why signs could not be displayed and Nagode replied "because I'm telling you." GOLDHAMER asked Nagode what law he was enforcing and Nagode replied "just follow my order."

13. Nagode then walked behind the recruiting tent and used his cell phone to contact a supervisor or supervisors not at the scene.

14. One demonstrator, Melissa Woo, was warned to go to the "free speech zone." No one in the group assembled was aware of a "free speech zone" at the Taste of Chicago. Moreover, at that time other individuals in the immediate vicinity of the Armed Forces recruiting booth were handing out flyers on behalf of various commercial enterprises in full view of police officers. Only the demonstrators were ordered to cease that activity or move to some other location.

15. When Ms. Woo did not comply with a second request to leave, she was arrested.

16. Nagode then threatened to issue an order to disperse.

17. Nagode also announced that the "festival area was not public" and stated that those assembled could not walk around with t-shirts with slogans on them or pass out leaflets. When told she could not leaflet, SCHIRMER went to stand by the people waiting in line to shoot baskets at the Army booth and spoke to them about military service.

18. Commander Keating as well as assorted lieutenants arrived, and an Officer Pohl, who arrived with Keating.

19. An Assistant Corporation Counsel was also present at this time, and he refused to identify himself.

20. Nagode then gave a general order to those assembled to disperse. Each lieutenant appeared to pick someone from those assembled to arrest. Keating then gave an order to arrest several of those assembled. GOLDHAMER did not leave, assuming it did not apply to him since he was not engaged in any protest.

21. Six persons were arrested, including GOLDHAMER and SCHIRMER. Nothing was said by any of the arresting officers as to why anyone was being arrested.

22. Plaintiffs and the others arrested were taken to a tent in Grant Park that was adjacent to what appeared to be a temporary police headquarters. Those arrested were then taken to the 1st District station.

23. Plaintiffs were charged with disorderly conduct, Chicago Municipal Code, MCC8-4-010 (the "Ordinance" - Exhibit 1) which, in MCC8-4-010(d) ("Subsection (d)"), states:

"A person commits disorderly conduct when he knowingly:
(d) Fails to obey a lawful order of dispersal by a person known by him to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance, or alarm;"

24. Plaintiffs appeared in court on four separate occasions on the charges against them. The police officers

repeatedly failed to appear at the court hearings. At the fourth appearance the State moved for yet another continuance, but the court denied the motion and dismissed the charges against Plaintiffs and the other four persons arrested.

Count I
First and Fourteenth Amendments, United States Constitution
Sections 2, 4 and 5, Illinois Constitution
Unconstitutionality of Disorderly Conduct Ordinance

25. Plaintiffs incorporate paragraphs 1 through 24 above as their allegations herein.

26. The City of Chicago's (the City) disorderly conduct ordinance is unconstitutional, facially and as applied, and Plaintiffs' arrest under that ordinance violated their civil rights under color of state law for the following reasons:

- A. Subsection (d) impermissibly infringes on the First Amendment's protection of the rights of speech and assembly without serving any compelling state interests;
- B. Subsection (d) is impermissibly vague as to what conduct it forbids so that persons of common intelligence must necessarily guess at its meaning and differ as to its application and fails to give persons fair warning as to what conduct is forbidden;

- C. Subsection (d) confers upon third parties a "hecklers' veto" on protected First Amendment activity, meaning that the authorities can effectively criminalize otherwise legal, protected conduct merely because of the misconduct of third parties, who may intend to cause the police to disrupt the protected conduct and arrest those who lawfully exercise their constitutional rights;
- D. Subsection (d) is overbroad in that it is not narrowly confined to allowable areas of control of citizen's conduct, but sweeps within its ambit activity protected by the First Amendment and criminalizes a refusal to disperse by participants engaged in lawful speech and assembly and who have not broken the law in any way;
- E. Subsection (d) fails to provide adequate safeguards to ensure that the authorities do not abuse their discretion in issuing the order to disperse.
- F. Subsection (d) fails to require that the authorities issuing the order to disperse provide

those affected a reasonable opportunity to comply, inform them of how much time they have to comply, and inform them how far they must disperse to comply; and

- G. Subsection (d) fails to specify what acts of disorderly conduct must be committed by three or more persons in order to justify an order to disperse.

27. More specifically, Subsection (d)'s prohibition of "serious inconvenience, annoyance, or alarm" does not promote a compelling state interest, and Chicago has been on notice of that fact going as far back as the United States Supreme Court's decision in *Terminiello v. Chicago*, 337 U.S. 1 (1949).

28. In addition, Subsection (d) is analogous to the Chicago gang-loitering ordinance that was declared unconstitutional by the United States Supreme Court, which held that the ordinance was impermissibly vague because it failed to establish minimal guidelines for law enforcement. *Chicago v. Morales*, 177 Ill.2d 440, 687 N.E.2d 53 (1997), *aff'd*, 527 U.S. 41 (1999).

29. As a criminal statute, the subject ordinance has a chilling and a deterrent effect which poses a greater threat to the freedom of speech and assembly protected by the First

Amendment greatly outweighing any benefit to a legitimate state interest in regulating citizen's conduct, authorizes and encourages arbitrary and discriminatory enforcement by its failure to adequately define a criminal offense, criminalizes a substantial amount of protected First Amendment activity, and operates as an unconstitutional form of censorship and prior restraint on the freedoms provided by the First Amendment and a deprivation of Due Process under the Fourteenth Amendment.

30. The subject ordinance was the basis for arrests of peaceful anti-war demonstrators on March 19, 2005, who were not given an order to disperse and were tried and found not guilty in the Circuit Court of Cook County.

31. The Plaintiffs plan to continue their participation in constitutionally protected political activities and protests and Plaintiffs fear repeated disruption of these activities and protests and prosecution for them on the basis of this unconstitutional ordinance.

WHEREFORE, Plaintiffs respectfully request this Court to declare that the subject ordinance is facially unconstitutional, to enter preliminary and permanent injunctions prohibiting its enforcement, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

COUNT II -- 42 U.S.C. § 1983
First Amendment Retaliation

32. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

33. The First Amendment to the United States Constitution guarantees Plaintiffs' rights to publicly assemble for political purposes and to speak out on matters of public concern without fear of unjust retaliation.

34. As described more fully in the preceding paragraphs, Plaintiffs engaged in protected assembly and speech on matters of public concern.

35. In direct retaliation for Plaintiffs' exercise of these protected rights, Defendants NAGODE, KEATING, POHL, and other as yet unknown high-ranking police department and City of Chicago officials, all of whom either had final policymaking authority or had been delegated with the same, retaliated against Plaintiffs by arresting them with no probable cause to do so, but solely because Plaintiffs had the temerity to engage in First Amendment activity, as described in the preceding paragraphs.

36. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

37. As a result of aforesaid unconstitutional conduct, Plaintiffs have suffered monetary damages and mental anguish, including emotional distress.

WHEREFORE Plaintiffs respectfully request this Court to enter judgment for monetary damages against Defendants NAGODE, KEATING, POHL, the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, and the CITY OF CHICAGO, to enter a judgment for punitive damages against Defendants NAGODE, KEATING, POHL, and the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

**COUNT III -- 42 U.S.C. 1983
Conspiracy**

38. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

39. As described more fully in the preceding paragraphs, the Defendants NAGODE, KEATING, POHL, and the as yet unknown police department and City of Chicago officials, all of whom

either had, or had been delegated, final policymaking authority, acting in concert with other known and unknown co-conspirators, reached an understanding to deprive Plaintiffs of their constitutional rights.

40. Plaintiffs were deprived of their Constitutional rights in the manner described in the preceding paragraphs.

41. In furtherance of the conspiracy, Defendants NAGODE, KEATING, POHL, and the as yet unknown police department and City of Chicago officials committed overt acts and were otherwise willful participants in joint activity with state actors acting under color of law.

42. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

43. As a proximate result of this conspiracy, Plaintiffs have suffered monetary damages and mental anguish, including emotional distress.

WHEREFORE Plaintiffs respectfully request this Court to enter judgment for monetary damages against Defendants NAGODE, KEATING, POHL, the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, and the CITY OF CHICAGO, to enter a judgment for punitive damages against Defendants NAGODE, KEATING, POHL, and the as yet UNKNOWN CHICAGO POLICE OFFICERS

and CITY OF CHICAGO EMPLOYEES, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

Count IV -- 42 U.S.C. 1983
Due Process

44. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

45. Subsection (d) of the disorderly conduct ordinance is impermissibly vague as to what conduct it forbids so that persons of common intelligence must necessarily guess at its meaning and differ as to its application and fails to give persons fair warning as to what conduct is forbidden.

46. Based on the foregoing, Plaintiffs were denied their right to due process under the law grounded on the Fourteenth Amendment of the United States Constitution.

WHEREFORE Plaintiffs respectfully requests this Court to enter judgment for monetary damages against Defendants NAGODE, KEATING, POHL, the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, and the CITY OF CHICAGO, to enter a judgment for punitive damages against Defendants NAGODE, KEATING POHL, and the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, to award Plaintiffs their attorneys' fees and

costs, and for any other such relief as this Court deems appropriate.

Count V -- 42 U.S.C. 1983
Claim For False Detention, Arrest, and Imprisonment

47. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

48. The actions of the Defendants NAGODE, KEATING, POHL and the UNKNOWN OFFICERS and CITY OF CHICAGO EMPLOYEES in falsely detaining, arresting and imprisoning Plaintiffs without reasonable suspicion or probable cause violated their Fourth Amendment rights to be free from unreasonable search and seizure under the United States Constitution, and thus violated 42 U.S.C. 1983.

49. The actions of the Defendants were the direct and proximate cause of the violations of the Plaintiffs' Fourth Amendment rights, suffering, mental distress, loss of income, and legal expenses, as set forth more fully above. WHEREFORE Plaintiffs respectfully requests this Court to enter judgment for monetary damages against Defendants NAGODE, KEATING, POHL, the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, and the CITY OF CHICAGO, to enter a judgment for punitive damages against Defendants NAGODE,

KEATING, POHL, and the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

**Count VI -- 42 U.S.C. 1983
Monell Claim**

50. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

51. The misconduct described above was undertaken pursuant to the policy and practice of the City of Chicago and the Chicago Police Department in that:

- A. as a matter of both policy and practice, the City of Chicago directly encourages, and is thereby the moving force behind, the very type of misconduct at issue here by directly ordering, supervising and condoning the suppression of First Amendment activity within the City of Chicago when that activity concerns gathering in public to protest the military or the war in Iraq and speaking out against the war in Iraq; and
- B. as a matter of widespread practice so prevalent as to comprise municipal policy, officers of the

Chicago Police Department abuse citizens in a manner similar to that alleged by Plaintiffs, and have done so since the mass arrest of 800 plus citizens at the very first protest against the Iraq war in Chicago.

52. As a result of the above-described wrongful conduct, as well as the City of Chicago's policy and practice, Plaintiff has suffered damages, including monetary damages and mental anguish.

WHEREFORE Plaintiffs respectfully request this Court to enter judgment for monetary damages against Defendant the CITY OF CHICAGO, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

**COUNT VII -- State Law Claim
Malicious Prosecution**

53. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

54. The acts alleged in the preceding paragraphs Defendants NAGODE, KEATING, POHL, and the as yet unknown police department and City of Chicago officials in creating a false story, falsely charging Plaintiffs with one count of Disorderly Conduct and thereby causing them to lose their liberty for hours

and be criminally prosecuted and incur legal expenses, out of pocket losses and loss of income, and emotional distress constituted the tort of malicious prosecution under the laws of the State of Illinois.

WHEREFORE Plaintiffs respectfully request this Court to enter judgment for monetary damages against Defendants NAGODE, KEATING, POHL, the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, and the CITY OF CHICAGO, to enter a judgment for punitive damages against Defendant NAGODE, KEATING, POHL, and the as yet UNKNOWN CHICAGO POLICE OFFICERS and CITY OF CHICAGO EMPLOYEES, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

**COUNT VIII -- State Law Claim
Respondeat Superior**

55. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

56. In committing the acts alleged in the preceding paragraphs, Defendants NAGODE, KEATING, POHL, and the as yet unknown police department and City of Chicago officials were agents of the City of Chicago, and were acting at all relevant times within the scope of their employment.

57. Defendant City of Chicago is liable as principal for all torts committed by its agents.

WHEREFORE Plaintiffs respectfully request this Court to enter judgment for monetary damages against Defendant the CITY OF CHICAGO, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

**COUNT IX -- State Law Claim
Indemnification**

58. Plaintiffs reallege by this reference all of the foregoing paragraphs of this Complaint as if restated fully herein.

59. Illinois law provides that public entities are directed to pay any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

60. Defendants NAGODE, KEATING, POHL, and the as yet unknown police department and City of Chicago officials, who all are or were employees of the City of Chicago, acted within the scope of their employment in committing the misconduct described herein.

WHEREFORE Plaintiffs respectfully request this Court to enter judgment for monetary damages against Defendant the CITY OF CHICAGO, to award Plaintiffs their attorneys' fees and costs, and for any other such relief as this Court deems appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury pursuant to
Federal Rule of Civil Procedure 38(b) on all issues so triable.

RESPECTFULLY SUBMITTED,

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