

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**CENTRAL ALABAMA PRIDE, INC.,
an Alabama non-profit corporation,**

Plaintiff,

v.

Case No. 2:08-cv-1533-KOB

**LARRY LANGFORD, in his
individual and official capacities
as Mayor of Birmingham**

Defendant.

AMENDED COMPLAINT

INTRODUCTION AND JURISDICTIONAL STATEMENT

1. This is an action brought pursuant to 42 U.S.C. §1983 seeking declaratory and injunctive relief, as well as compensatory and punitive damages, to redress violation of the constitutional rights of Plaintiff Central Alabama Pride (“Plaintiff” or “C.A.P.”) by Defendant Larry Langford (“Defendant”). This Court has jurisdiction pursuant to that statute as well as 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1343(a)(3) (redress of civil rights violations under color of state law). Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) in that Plaintiff was incorporated in Jefferson County, Alabama, in the Northern District of Alabama, Defendant resides there and all actions complained of occurred there.

2. Plaintiff is an Alabama non-profit corporation and is exempt from the

payment of taxes under the provisions of 26 U.S.C. §501(c)(3). Plaintiff incorporated in Jefferson County with the objectives and purposes of promoting pride within the lesbian, gay, bisexual and transgender (“LGBT”) community, and understanding between the LGBT community all other communities in central Alabama through education, public forums and organized social and recreational activities. Plaintiff was founded in 1979 and secured its status under 26 U.S.C. §501(c)(3) in 2007. Plaintiff brings this action on behalf of itself and its members.

3. Defendant is the mayor of the City of Birmingham (the “City” or “Birmingham”). As such, Defendant is the City’s chief executive and exercises general supervision and control of all other officers, employees and affairs of the City pursuant to Ala. Code §11-43D-14 and §11-43-81. Thus, Defendant is the final decision maker and final policy maker with respect to deciding on and directing the duties of City employees. In making the decisions complained of in this action, Defendant acted in his capacity as the final decision maker and final policy maker for the City. Defendant is sued in his individual and official capacities.

STATEMENT OF FACTS

The History of Central Alabama Pride and Birmingham Pride Celebrations

4. Since June 1989, Plaintiff has organized and sponsored a parade through the Southside area of Birmingham as part of Plaintiff’s annual Pride Celebration (“the

parade”). The month of June is generally celebrated in LGBT communities across the country in commemoration of the “Stonewall Uprising,” when police in New York City raided a gay bar, the Stonewall Inn, on June 28, 1969 and patrons – having endured years of abuse at the hands of police and government authorities – engaged in active resistance to government mistreatment that lasted several days. The Stonewall Uprising is generally considered the beginning of the modern gay liberation movement.

5. Each year from 1989 through 2007, Plaintiff was given a permit for its parade, the City’s mayor at the time (initially, Richard Arrington and, following him, Bernard Kincaid) issued a proclamation in honor of the event and Plaintiff’s banners were attached to City utility poles by City employees, as part of a custom and tradition within the City that facilitates private expression by temporarily attaching entities’ banners and flags recognizing private entities as well as events taking place within the City (“banner forum”). Plaintiff’s banners are rainbow flags, universally recognized as representing gay pride. These banners have been attached in all these years by City employees to four utility poles at one intersection along the parade route.

The City’s Banner Forum

6. The City has, over the years, required City employees to attach and detach private entities’ flags and banners on City utility poles as part of its banner forum. This practice facilitates speech announcing many diverse events that take place in

Birmingham.

7. Generally, the City's Traffic Engineering Department is provided the flags or banners to be attached, and does so safely and efficiently with the use of a bucket truck. Johnathan Quinn (Quinn), Plaintiff's president, and other C.A.P. members are routinely present during the attachment of their banners and celebrate the attachment as the unofficial kick-off of the Pride celebration. The entire process of attaching the banners takes the City's employees approximately 15 minutes.

8. The City utility poles, upon which the four Pride banners regularly have been attached, are positioned inches from the busy "Five Points South" intersection in Birmingham. The attachment posts for flags and banners on City utility poles are more than 30 feet high, and are unreachable without mechanical or other assistance. The attachment posts were specifically designed to hold flags and banners and are permanently attached, if not part of, the City utility poles.

9. One of the private entities and events that has used and otherwise participated in the banner forum is the City Stages music festival, which is reportedly now some \$150,000 in debt and has been subsidized by the City. In contrast, Plaintiff's Pride events are an annual source of income for the City and local merchants. Among the many other private entities and events that have utilized the City's banner forum and have had their expressive flags and banners attached to City utility poles by City

employees are football games, including the “Magic City Classic,” an annual football game sponsored by several large, for-profit corporations, including Food World, Pepsi and McDonald’s; cultural festivals; and religious entities.

10. At all times relevant to this action, the City’s banner forum was a designated public forum created by the City through a policy, custom and/or practice of allowing private entities to exercise their right to freedom of expression by announcing and publicizing events taking place in the City through having their expressive flags and banners attached by City employees to City utility poles.

Defendant’s Efforts to Prevent the 2008 Pride Celebration

11. Defendant was elected mayor of the City of Birmingham in October 2007 and assumed the office on November 13, 2007.

12. In May of 2008, in accordance with Plaintiff’s past practice and City policies, Quinn, on behalf of Plaintiff, filed an application for a parade permit, a form requesting a proclamation recognizing Pride, and a form to have Plaintiff’s Pride flags attached to City utility poles along the parade route. The request sought to have the banners attached, as always, beginning one week before the parade, which was scheduled to take place on June 7, 2008.

13. Applications for parade permits in Birmingham are routinely handled through the Birmingham Department of Traffic Engineering which, on information and

belief, issues permits in consultation with the City's police department. Plaintiff's Pride parade had, since its inception, been so handled. However, on or about May 24, 2008, Defendant announced that he would not grant a permit for the parade. Defendant's reasons for denying the permit and attempting to prevent the parade was that he did not personally condone the "lifestyle choice" represented by the Plaintiff, the parade and its gay-positive message. According to news reports, "Langford said anyone familiar with his personality and religious views should not be surprised by the denial."

14. Defendant's unilateral and publicly announced intervention into a matter routinely handled by the City's Traffic Engineering and/or police departments resulted in significant local press coverage. A meeting was arranged between Defendant, members of the local LGBT community, including officers of the Plaintiff corporation and Alabama State Representative Patricia Todd (who is Alabama's first openly gay state legislator), as well as the City Councilor representing the Five Points South district. As a consequence of the meeting, Defendant agreed not to interfere with the parade, so long as he did not have to sign the parade permit (which he never would have had to do in the ordinary course of events). Defendant refused, however, to issue the proclamation that had always been issued in previous years.

15. The following day, Defendant announced that he would not allow City

employees to attach Plaintiff's expressive banners to the City utility poles. In fact, Defendant demanded that Plaintiff immediately retrieve its banners, which were in the City's possession and ready to be attached and displayed in the banner forum, threatening to have them thrown in the garbage if they were not retrieved.

16. Plaintiff's Pride flags were annually and routinely attached and detached by City employees, as were all other flags and banners of all other entities participating in the banner forum. At Defendant's express direction, however, employees of the City Department of Traffic Engineering were not permitted or authorized to attach Plaintiff's expressive banners by Defendant's intervention, even as those City employees were preparing to do so.

17. On information and belief, City employees have never been prevented from attaching, or refused authorization to attach, the expressive banners or flags of any other organization using the City's banner forum.

18. When confronted with Defendant's refusal to permit or authorize City employees to attach Plaintiff's expressive flags, Quinn requested that C.A.P. be provided the reason. Defendant reiterated his objection to the banners' gay-positive message and stated that he would not "waste taxpayers" money attaching Plaintiff's banners. Quinn offered to have C.A.P. reimburse the City for any costs associated with having the banners attached and expressly offered to pay the City for twice the amount

of time that Defendant claimed would be required, which amount far exceeded the actual time and effort required to hang Plaintiff's banners in every prior year. Defendant refused the offer and steadfastly denied Plaintiff the ability to use the City's banner forum on equal footing as other similarly situated entities.

19. As a result of Defendant's refusal to permit or authorize City employees to attach Plaintiff's Pride flags to City utility poles, members of Plaintiff were forced to go to considerable lengths and expose themselves to significant risks not faced by members of any other similarly situated organization in order to effectuate their speech in a designated public forum. Among the additional expenses and effort required to use the banner forum as a result of Defendant's actions, Plaintiff was forced to purchase a tall ladder and members of Plaintiff were forced to climb to the highest rung of the ladder and extend themselves approximately three stories above a busy intersection in order to attach and detach Plaintiff's banners, an effort that required four members of the organization to accomplish.

20. Based on information and belief, all other flags and banners that use the banner forum are attached and detached to City utility poles by City employees using City resources.

21. Based on information and belief, no other private individuals have been required to expose themselves to risk of personal injury in order to exercise their right

of expression via the City's banner forum.

22. Defendant was solely responsible for the decision not to permit or authorize City employees to attach and detach Plaintiff's banners to City utility poles. The only reason Defendant expressed for his decision not to permit or authorize City employees to attach Plaintiff's banners to City property was that he disagreed with Plaintiff's message in that he personally disapproves of the "lifestyle choice" the Pride banners represent. Because he is the City's chief executive and, in this context, final policymaker, Plaintiff alleges that Defendant's unilateral decision concerning the attachment of the banners to City utility poles, specifically, his decision not to permit or authorize City employees to attach and detach Plaintiff's expressive banners, constitutes municipal policy.

23. Defendant unilaterally decided that Plaintiff's message was distasteful to him and therefore denied to Plaintiff City services and a governmental benefit made available to other similarly situated entities.

24. No compelling or even rational or legitimate reason existed to treat Plaintiff unlike other similarly situated entities. Defendant's actions were impermissibly based on animus and/or were wholly arbitrary.

25. While Defendant was not required to sign the proclamation, he violated Plaintiff's constitutional rights by refusing to permit or authorize City employees to

provide governmental services the City routinely provide all other similarly situated entities and, in so doing, Defendant infringed upon Plaintiff's fundamental rights to free speech and equal protection without a legitimate governmental interest or reason.

26. Plaintiff is aware of no criteria employed by Defendant in deciding which expressive banners and flags he will permit or authorize to be attached to City utility poles by City employees and those he will not so allow. Thus, each time Defendant makes such a decision, his actions as final policymaker in this area constitutes municipal policy. By exercising his authority in this manner, he provides himself unbridled discretion, based solely on his approval or disapproval of a particular message, in choosing among entities and expressive content.

27. All the actions taken by Defendant were in his capacity as mayor of the City of Birmingham and, therefore, were taken under color of state law. The actions taken by Defendant were constitutional violations of clearly established law.

Plaintiff's Injuries

28. Because Defendant would not permit or authorize City employees to hang Plaintiff's banners, Plaintiff had to have purchased and pay for a 25 foot ladder at a cost of approximately \$350.00 in order to hang Plaintiff's banners and thereby use, and otherwise participate in, the City's banner forum.

29. In addition to the cost incurred as a result of Defendant's discriminatory

treatment, Plaintiff's expression was significantly delayed and limited to only one day before the parade began contrary to Plaintiff's written requests, intentions and years past.

30. The discriminatory treatment Plaintiff experienced in being denied government resources on equal footing with other similarly situated entities resulted in reputational and dignitary harm to Plaintiff.

31. Plaintiff intends to organize and sponsor Birmingham's Pride celebration in 2009 and to use the banner forum to display its message announcing and commemorating the Pride celebration. Plaintiff seeks to be provided government resources in 2009 in the same manner as other entities using the banner forum and to be treated in the same manner as other entities using the banner forum.

FIRST CAUSE OF ACTION
(Violation of Freedom of Speech)

32. Plaintiff adopts and incorporates by reference all the preceding allegations in this Amended Complaint.

33. As set forth herein, Defendant's actions that infringed upon, delayed, and limited Plaintiff's ability to use a designated public forum of the City, and that denied Plaintiff a governmental benefit based on the content of Plaintiff's speech, constituted viewpoint and/or content-based discrimination in violation of Plaintiff's rights under

the First Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment.

34. Defendant's policy regulating speech within the banner forum, by determining which entities within the forum will be provided benefit of City employees to facilitate their expressions and which entities will be forced to suffer the risks and costs of hanging their own banners to exercise their right to expression in the forum, violates the right of free speech in that it is not justified by any compelling or even rational or legitimate state interest and is arbitrary and, if not enjoined, would provide a single governmental official with unbridled and unappealable authority to decide which entities will receive municipal assistance in expressing their messages and which will be denied such assistance.

SECOND CAUSE OF ACTION

(Equal Protection Violation Burdening Plaintiff's Right to Free Speech Without a Compelling Governmental Interest)

35. Plaintiff adopts and incorporates by reference the preceding allegations.

36. Defendant's actions in refusing to permit or authorize City employees to attach Plaintiff's expressive banners to City utility poles in compliance with the City's customary practice for participants in its banner forum burdened and otherwise infringed upon Plaintiff's fundamental right to free speech within a designated public forum based on the content of Plaintiff's speech.

37. There was no compelling or even rational or legitimate governmental interest justifying the denial of City services to Plaintiff that are routinely provided to other similarly-situated entities.

38. Defendant's actions violated Plaintiff's right to equal protection of the law as protected by the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

(Equal Protection and Due Process Violation for Arbitrary Action Lacking Any Legitimate Governmental Interest)

39. Plaintiff adopts and incorporates by reference the preceding allegations.

40. Defendant's actions in refusing to permit or authorize City employees to attach Plaintiff's expressive flags to City utility poles in compliance with its customary practice for participants in its banner forum was wholly arbitrary and/or based on animus.

41. There was no rational basis or legitimate governmental interest justifying the denial of City services to Plaintiff that are routinely provided to other similarly situated entities. As a result, Defendant violated Plaintiff's rights to equal protection and due process not to be treated arbitrarily by the government.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment under all its causes of action and requests that this Court grant the following relief:

- i. A declaratory judgment holding that Defendant's actions deprived Plaintiff of its constitutional rights.
- ii. A permanent injunction prohibiting Defendant from treating Plaintiff in any way differently from other similarly situated entities, or denying Plaintiff City services made available to such entities.
- iii. Judgment against Defendant for nominal damages.
- iv. Punitive damages against Defendant in his individual capacity.
- v. Judgment against Defendant, in his official and/or individual capacity, for three hundred fifty dollars (\$350.00).
- vi. Pursuant to 42 U.S.C. §1988, Plaintiff's costs and reasonable attorneys' fees for pursuing this action.
- vii. Such other, further and different relief as to which Plaintiff may be entitled.

This 22nd day of December, 2008.

/s David Gespass
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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been served on all counsel via this Court's electronic case management and filing system this the 22nd day of December, 2008.

/s/ David Gespass