

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Survivors Network of Those Abused by Priests,)
Inc.;)
)
Voice of the Faithful, Region 8, also known as)
Voice of the Faithful (Kansas City),)
)
David Biersmith, and)
)
Holly Hesemann,)
)
Plaintiffs,)
v.)
Jennifer M. Joyce, solely in her official capacity)
as the Circuit Attorney for the City of St. Louis,)
Missouri;)
)
Daniel Isom, solely in his official capacity as the)
Chief of Police for the Metropolitan Police)
Department for the City of St. Louis, Missouri;)
)
Chris Koster, solely in his official capacity as the)
Attorney General of the State of Missouri; and)
)
Ronald K. Replogle, solely in his official)
capacity as Superintendent of the Missouri)
Highway Patrol;)
)
Defendants.)

No. 4:12-cv-1501

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF
PURSUANT TO 42 U.S.C. § 1983**

Plaintiffs, for their complaint against Defendants, state as follows:

INTRODUCTION

1. Plaintiffs engage in peaceful protest activities, including leafleting and holding signs, on public sidewalks outside churches and other locations used for religious purposes to spread their messages. They regularly engage in outreach activities near houses of worship in

Missouri, and they would like to continue to do so in the future without risking being arrested or prosecuted.

2. The State of Missouri enacted the “House of Worship Protection Act,” which makes it a crime to “intentionally and unreasonably disturb[], interrupt[], or disquiet[] any house of worship by using profane discourse, rude or indecent behavior, or making noise either within the house of worship or so near it as to disturb the order and solemnity of the worship services.” 1 S.B. 755, 94th Gen. Assemb., Reg. Sess. (Mo. 2012).

3. The House of Worship Protection Act is codified as MO. REV. STAT. § 574.035, and will become effective on August 28, 2012.

4. MO. REV. STAT. § 574.035 impermissibly infringes upon free speech rights secured by the Free Speech Clause of the First Amendment to the Constitution of the United States and incorporated to the states and their municipalities by the Fourteenth Amendment.

5. MO. REV. STAT. § 574.035 is impermissibly vague, in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

6. MO. REV. STAT. § 574.035 violates the free speech guarantee of Article 1, § 8 of the Constitution of the State of Missouri.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 over Plaintiffs’ claims of a deprivation of a right, privilege, or immunity secured by the Constitution under color of state law.

8. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiffs’ civil action arising under the Constitution of the United States.

9. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1343 to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.

10. In addition, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' cause of action arising under the Constitution of the State of Missouri.

11. Venue lies in the United States District Court for the Eastern District of Missouri because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the City of St. Louis. 28 U.S.C. § 1391(b)(2).

12. Divisional venue is in the Eastern Division because the events leading to the claim for relief arose in the City of St. Louis and two defendants reside in the City of St. Louis. E.D.Mo. L.R. 2.07(A)(1), (B)(2).

PARTIES

13. Plaintiff Survivors Network of Those Abused by Priests, Inc. ("SNAP"), is a not-for-profit corporation organized and registered under the laws of the State of Illinois and registered as a foreign corporation in good standing with the State of Missouri. SNAP is a network of survivors of religious sexual abuse and their supporters who work to protect the vulnerable, heal the wounded, and prevent abuse, including by educating their communities about the effects of abuse and exposing the malignant actions of abusive religious ministers and the church officials who shield them.

14. Plaintiff Voice of the Faithful, Region 8, also known as Voice of the Faithful (Kansas City) ("VOTF"), is an association of individuals operating under the laws of the State of Missouri and registered with the Missouri Secretary of State. VOTF was organized in response to the sexual abuse crisis within the Catholic Church and consists of Catholics who share a

commitment to assisting survivors of sexual abuse within the church, support priests of integrity, protect children, and work toward full lay participation in church governance.

15. David Biersmith is resident of the State of Missouri. He is a member of VOTF.

16. Holly Hesemann is a resident of the State of Missouri. She is a member of SNAP.

17. Defendant Jennifer Joyce M. Joyce is the Circuit Attorney for the City of St. Louis. Joyce is responsible for commencing and prosecuting criminal actions, including alleged violations of MO. REV. STAT. § 574.035, within the City of St. Louis. She is sued only in her official capacity.

18. Defendant Daniel Isom is the Chief of Police for the Metropolitan Police Department for the City of St. Louis. Isom is responsible for enforcing Missouri criminal statutes, including MO. REV. STAT. § 574.035, within the City of St. Louis. He is sued solely in his official capacity.

19. Defendant Chris Koster is the Attorney General of the State of Missouri. Koster is the State's chief law enforcement officer and is charged with instituting any proceedings necessary to enforce state statutes. MO. REV. STAT. § 27.060. The Attorney General is also authorized to aid prosecutors when so directed by the Governor and to sign indictments when directed by the court. MO. REV. STAT. § 27.030. In addition, the Attorney General represents the state on appeal in all felony cases. He is sued only in his official capacity.

20. Defendant Ronald K. Replogle is the Superintendent of the Missouri Highway Patrol. He is sued solely in his official capacity. As superintendent of a statewide law-enforcement agency, he is responsible for the enforcement of MO. REV. STAT. § 574.035 against persons who come into contact with the Missouri Highway Patrol within the State of Missouri.

21. In all actions relative to MO. REV. STAT. § 574.035, each of the defendants and their agents act under color of state law.

FACTUAL ALLEGATIONS

22. Effective August 28, 2012, MO. REV. STAT. § 574.035 will provide:

1. This section shall be known and may be cited as the “House of Worship Protection Act”.

2. For purposes of this section, “house of worship” means any church, synagogue, mosque, other building or structure, or public or private place used for religious worship, religious instruction, or other religious purpose.

3. A person commits the crime of disrupting a house of worship if such person:

(1) Intentionally and unreasonably disturbs, interrupts, or disquiets any house of worship by using profane discourse, rude or indecent behavior, or making noise either within the house of worship or so near it as to disturb the order and solemnity of the worship services; or

(2) Intentionally injures, intimidates, or interferes with or attempts to injure, intimidate, or interfere with any person lawfully exercising the right of religious freedom in or outside of a house of worship or seeking access to a house of worship, whether by force, threat, or physical obstruction.

4. Disrupting a house of worship is a class B misdemeanor. Any second offense is a class A misdemeanor. Any third or subsequent offense is a class D felony.

23. By its express terms, MO. REV. STAT. § 574.035’s restrictions on speech apply at any public location used for religious worship, religious instruction, or other religious purposes and, thus, would include such traditional public fora as parks and sidewalks outside public buildings rented by religious organizations.

24. SNAP and its members, including Plaintiff Hesemann, regularly picket and distribute leaflets outside of churches, including churches in the City of St. Louis, where clergy alleged to have sexually abused children have served. The purpose of leafleting and picketing in

this location is to reach an audience of persons who may have been raped or physically or emotionally abused by clergy members with SNAP's messages that victims of child rape are not alone and have rights.

25. VOTF and its members, including Plaintiff Biersmith, regularly stand peacefully on public sidewalks outside churches and other locations that meet the definition for "house of worship" with signs expressing messages of support for victims of sexual abuse and the need for Catholics to push internally for change within the Catholic Church.

26. Plaintiffs' speech is about matters of public concern.

27. Organizational Plaintiffs and their members, including Plaintiffs Biersmith and Hesemann, desire to engage in similar expressive activities on public sidewalks and at other public places near houses of worship in Missouri in the future.

28. Missouri law imposes an affirmative duty upon prosecutors to cause the investigation of, and arrest and prosecution for, violations of law that come to the knowledge of prosecutors, regardless of whether police or private complainants have taken action. *State ex inf. McKittrick v. Graves*, 144 S.W.2d 91 (Mo. 1940); *State ex inf. McKittrick v. Wymore*, 132 S.W.2d 979 (Mo. 1939).

29. Plaintiffs and their members will be chilled from engaging in expressive conduct when MO. REV. STAT. § 574.035 is effective for reasons including that they do not understand how, or by whom, it will be determined whether their expression disturbs a house of worship, interferes with those seeking access to a house of worship, disquiets a house of worship, disturbs the order and solemnity of worship services, constitutes profane discourse, is rude, or is indecent.

COUNT I

*MO. REV. STAT. § 574.035 is Unconstitutional
Under the Free Speech Provisions of the First Amendment*

30. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

31. MO. REV. STAT. § 574.035 is an invalid time, place, and manner restriction.

32. MO. REV. STAT. § 574.035 is a content-based restriction on speech.

33. No significant government interest sufficient to outweigh the right to expressive conduct under the Free Speech Clause is furthered by MO. REV. STAT. § 574.035.

34. MO. REV. STAT. § 574.035 is not narrowly tailored.

35. MO. REV. STAT. § 574.035 is unconstitutionally over-broad.

36. MO. REV. STAT. § 574.035 fails to leave open ample alternative for Plaintiffs' speech.

COUNT II

*MO. REV. STAT. § 574.035 is Unconstitutional
Under the Due Process Clause of the Fourteenth Amendment*

37. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

38. Mo. Rev. Stat. § 574.035 is unduly vague such that reasonable persons and law enforcement officers are not on notice as to precisely what conduct is prohibited.

COUNT III

*MO. REV. STAT. § 574.035 Violates the
Free Speech Guarantee of Article I, § 8
of the Constitution of the State of Missouri*

39. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

40. MO. REV. STAT. § 574.035 infringes on free speech rights guaranteed in the Constitution of the State of Missouri.

WHEREFORE, Plaintiffs pray this Court:

- A. Enter declaratory judgment pursuant to 42 U.S.C. § 1983 finding MO. REV. STAT. § 574.035 unconstitutional;
- B. Issue preliminary and permanent injunctions enjoining enforcement of MO. REV. STAT. § 574.035;
- C. Award Plaintiff's costs, including reasonable attorneys fees, pursuant to 42 U.S.C. §1988; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Anthony E. Rothert
ANTHONY E. ROTHERT, #44827MO
GRANT R. DOTY, #60788MO
AMERICAN CIVIL LIBERTIES
UNION OF EASTERN MISSOURI
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St. Louis, Missouri 63108
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Attorneys for Plaintiffs

Verification of Voice of the Faithful (VOTF) (Kansas City)

I have studied the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ David Biersmith
David Biersmith, Chair of VOTF (Kansas City)

Verification of David Biersmith

I have studied the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ David Biersmith
David Biersmith

Verification of Holly Hesemann

I have studied the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ Holly Hesemann
Holly Hesemann