

**In the United States District Court
Southern District of Iowa
(Western Division)**

Margie J. Phelps, Elizabeth M. Phelps, and Timothy B. Phelps, on behalf of themselves and “Individual Picketers from the Westboro Baptist Church,”
Petitioners

vs.

Docket No. ##-CV-####

Red Oak Police Chief Drew Powers; Montgomery County Sheriff Joe Sampson, and Council Bluffs Police Chief, Ralph O’Donnell in their personal capacities, in their capacity as officials, and as class representatives for police chiefs and county sheriffs’ departments within the State of Iowa, Respondents ,

C O M P L A I N T

COME NOW, the Petitioners, MARGIE J. PHELPS, ELIZABETH M. PHELPS, AND TIMOTHY B. PHELPS and for their Complaint against the above-named Respondents, respectfully state:

I. NATURE OF PROCEEDING

This is an action brought under 42 U.S.C. § 1983 seeking protection from continued civil rights abuses. The Petitioners are United States citizens who have repeatedly been prevented from exercising their First Amendment rights to engage in protests, demonstrations and other forms of protected speech and religious exercise that utilize the flag of the United States in unapproved ways. Petitioners bring this action on their own behalf and on behalf of a class of other individuals who picket as, or in conjunction with, members of the Westboro Baptist Church of Topeka Kansas. Particularly, the Petitioners and members of the class have been threatened with arrest for flag desecration under previously invalidated¹ Iowa flag desecration and misuse [*flag abuse*] statutes² in violation of their First Amendment rights of religious freedom and expression.

The Petitioners reasonably fear future arrest and prosecution for flag misuse or desecration in regard to themselves and other class members unless judicial relief is granted. The Petitioners have been censorially chilled in their intentional expressive use of the U.S. Flag and in their religious practices and beliefs concerning handling of the flag. They also fear additional retribution based merely on their perceived expression when, in conformance with their religious beliefs, they handle the U.S. flag without any

¹ See Roe v. Milligan, 479 F. Supp 2d 995 (S.D. Iowa 2007) invalidating both statutes.

² Iowa Code, Chapter 718A (“*flag desecration*”) and Iowa Code § 723.4(6) (“*flag misuse*”) [hereinafter: “*flag abuse statutes*”]

particular care or deference.³ Should the Respondents assert that any part of Iowa's flag abuse statutes remain "on the books" or are constitutional, or otherwise still legally enforceable, Petitioners further assert First Amendment "over-breadth standing" in order to challenge such legal interpretations and conclusions as they may be applied even to those individuals and situations not before the court.⁴

The Petitioners seek injunctive relief forbidding any future enforcement of Iowa's existing Flag Desecration Statutes against themselves or members of their proposed class; declaratory relief re-confirming the invalidity of Iowa's flag abuse statutes in their entirety; and judgment for reasonable attorneys fees and the costs of this action.

II. JURISDICTION AND VENUE

Jurisdiction of this matter is predicated on 28 U.S.C, §1331 and §1343, which confer original jurisdiction for federal district courts in civil actions arising under the Constitution and civil rights statutes of the United States. Supplemental jurisdiction over state constitutional claims is obtained through 28 U.S.C. §1367 which requires federal district courts to exercise jurisdiction over claims that "...are so related to claims in the action that they form part of the same case or controversy" This Court has authority pursuant to 28 U.S.C. §2201 to provide declaratory relief.

³ *C.f.*, *Texas v. Johnson*, 491 U.S. 397 at 403 fn.3 (1989). [reserving ruling upon dragging a flag upon the ground not to express contempt or any other message, but simply because one is tired.]

⁴ Iowa Code, Chapter 718A ("*flag desecration*") and Iowa Code § 723.4(6) ("*flag misuse*").

III. PARTIES

1. Petitioners Margie J. Phelps, Elizabeth M. Phelps, and Timothy B. Phelps are natural born citizens of the U.S, residing in Topeka, Kansas.
2. The Petitioners are active members of the Westboro Baptist Church located in Topeka and participate regularly in the Church's activities including frequent religious exercises that include public demonstrations and protests involving handling and use of their privately owned United States flags and flag symbols.
3. The Petitioners bring suit in their own name and as representatives for a proposed class consisting of individuals who demonstrate as, or in conjunction with, members of the Westboro Baptist Church of Topeka Kansas.
4. An absence of respect for the United States flag and the elimination of that flag as an idolatrous symbol are core religious tenents of the Westboro Baptist Church, and a part of the religious message that members of that church are bound to convey to others in witnessing God's will according to their faith and practice.
5. Respondent Drew Powers is the Chief of Police for the police department of the municipality of Red Oak, Iowa.
6. Joe Sampson is the Sheriff of Montgomery County, Iowa.
7. Ralph O'Donnell is the Chief of Police of the Council Bluffs, Iowa municipal police department.

8. Chief Powers, Sheriff Sampson and Chief O'Donnell are top level supervisors within their respective departments with final day-to-day decision making authority over policies and practices regarding the enforcement of Iowa's "flag abuse statutes."
9. Respondents, Powers, Sampson and O'Donnell are also named as representatives for a respondent class consisting of all police chiefs and county sheriffs' departments within the State of Iowa
10. Other members of the public may be chilled from exercising their constitutional right to freely express themselves through negative treatment of the U.S. flag or may be punished for imputed speech in instances still not before the court, and so the Petitioners should be permitted to establish First Amendment overbreadth standing to provide timely and effective vindication of their rights.
11. Iowa Code Section 718A.6 threatens law enforcement officials with removal from office if they fail to enforce Iowa Code Chapter 718A {flag desecration}.
12. Due to both the effect of Iowa Code Section 718A.6 and the facts further pled below, a genuine case and controversy exists between the parties over the continued enforceability of Iowa's flag abuse statutes.

IV. OTHER FACTS & SPECIFICATIONS

13. The "flag" or flags in issue here are all privately owned U.S. flags or flag symbols based on the official flag of the United States of America.
14. The case of *Texas v Johnson*, 491 U.S. 397, was decided in **1989**.
15. On March 27, **2007**, U.S. Chief District Judge, Robert Pratt issued a decision and opinion declaring the Iowa flag desecration and flag misuse statutes to be facially void for vagueness as a matter of constitutional law. {fn. 1, *supra*}
16. Nevertheless, on or about July 24th, **2010** and again on July 14, **2012** Chief Powers exercised his final decision making authority to continue enforcement of Iowa's flag abuse statutes including, Iowa Code Chapter 718A, "Desecration of Flag or Other Insignia" in connection with public demonstrations conducted by the Petitioners and other members of the Westboro Baptist church in Red Oak.
17. On each occasion, Chief Powers communicated his decision to one or more lead demonstrators from the Westboro Baptist Church.
18. Officers Nate Elwood, & Rose Ives of the Red Oak Police Department and Montgomery County Sheriff Joe Sampson were present and on duty in their official capacities at the Petitioners' demonstration on July 14th, 2012.

19. At the July 14th, 2012 demonstration, Officers Elwood and Ives and Sheriff Sampson each gave directives to Margie Phelps and other demonstrators to desist from certain expressive uses of the U.S. flag under apparent threats of arrest.
20. In so doing Officers Elwood and Ives, and Sheriff Sampson were implementing the decision of Chief Powers to continue enforcement of Iowa's Flag Abuse statutes with respect to the actions of the Westboro Baptist Church demonstrators.
21. As an independent law enforcement supervisor, Sheriff Sampson was also following his own decisions regarding enforcement of Iowa's flag abuse statutes.
22. On April 22, **2011**, Members of the Westboro Baptist Church picketed in Council Bluffs, Iowa in connection with the funeral of a dead soldier.
23. At the April 22d picket a Council Bluffs police officer advised Sam Phelps-Roper, a church member and protestor, that a state law prohibited flag desecration.
24. After checking with headquarters, the Council Bluffs police officer then informed Sam Phelps-Roper that the protestors' use of the U.S. flag would be limited to displaying it upside down.
25. On or about December 8th, **2012**, Petitioners Timothy Phelps and Elizabeth Phelps led another demonstration in Council Bluffs Iowa.

26. Prior to the Council Bluffs protest, Petitioner Timothy Phelps spoke with an official at the Council Bluffs Police Department in regard to the planned protest and asked the official whether the Council Bluffs Police would be applying Iowa's Flag desecration statutes to the protestors.
27. The Council Bluffs police official responded, that the law prohibits destroying or destruction of the flag and so they would apply it to dragging the flag because of the potential for its destruction.
28. In so responding, the Council Bluff's police officers on both occasions were following a departmental decision or policy regarding continued enforcement of Iowa's flag abuse statutes established by Respondent Ralph O'Donnell.
29. As a result of Respondent O'Donnell's policy or decision to enforce Iowa's flag abuse statutes, Petitioners Timothy and Elizabeth Phelps, and other Westboro Baptist Church demonstrators were prevented from freely using the United States flag as they had intended in the course of their Council Bluffs demonstrations.
30. The actions of the Respondents have deprived the Petitioners and their fellow demonstrators of the right to freely engage in symbolic speech involving disrespectful treatment of the U.S. Flag, and of their religious freedom to treat the flag without special deference or in contempt.

31. The Petitioners and those who have demonstrated with them have experienced numerous similar enforcement efforts in other jurisdictions where they have planned or attempted to use the United States Flag to convey their message and practice their religious beliefs.
32. Members of the Westboro Baptist Church are likely to continue to protest in Red Oak, Council Bluffs and other Iowa communities in similar demonstrations where they will seek to use and handle the United States flag.
33. Based on their repeated experiences, the Petitioners and their proposed class reasonably fear continued attempts to enforce Iowa's flag abuse statutes to the detriment of their freedom of speech and religion, throughout Iowa.
34. Since the court decisions invalidating flag desecration statutes have not been heeded by numerous law enforcement agencies, the Petitioners are entitled to more effective relief in the form of an injunction covering jurisdictions in which they and their adherents may potentially demonstrate.
35. The public-at-large deserves protection from the continued enforcement of unconstitutional flag abuse laws due to the continued pattern of enforcement by local law enforcement agencies.
36. No previous application for the injunctive relief requested herein, has been made to or declined by any other court.

IV. CLAIMS PRESENTED

37. All actions of the Respondents as described herein are assertions of official governmental power or authority undertaken under color of statute, ordinance, regulation, customs, or usages within the meaning of 42 U.S.C., §1983.
38. Iowa Code Section 718A.6 is unconstitutional on its face because it requires enforcement of a statute that has been declared facially void for vagueness on constitutionally valid grounds.
39. The Petitioners and members of their proposed class have a constitutional right, protected by the 1st Amendment to the U.S. Constitution and Article I, Section 7 of the Iowa Constitution, not to be officially threatened, arrested, or punished for any intentional, "imputed" or perceived expressive use of their privately owned U.S. flag and flag symbols under Iowa's flag abuse statutes.
40. The Petitioners and members of their proposed class have a right under the "Free Exercise" clauses of the 1st Amendment to the U.S. Constitution and Article I, Section 3 of the Iowa Constitution to treat and display the U.S. flag in the manner dictated by their religious beliefs and doctrines without being officially threatened with arrest or prosecution for violation of Iowa's flag abuse statutes.

41. The Petitioners and members of their proposed class will continue to suffer irreparable harm to their personal rights of expression and religious freedom guaranteed by the federal and Iowa Constitutions as a result of the Respondents' continuing attempts to enforce Iowa's flag abuse statutes in spite of their duties to uphold the Iowa and U.S. Constitutions.

WHEREFORE, the Petitioners pray for:

A. A declaration by this Court that Iowa Code Section 718A.6 is unconstitutional for the grounds previously stated.

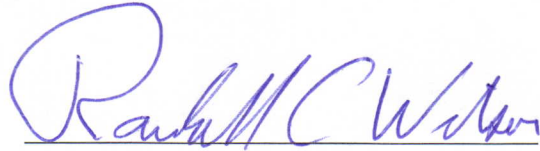
B. A declaration by this Court confirming that Iowa's flag abuse statutes remain facially unconstitutional and holding that any part of Iowa's flag abuse statutes that have not already been held unconstitutional, are unconstitutional both on their face and as applied to the activities of the Petitioners, their proposed class and the general public.

C. A temporary and permanent injunction restraining Iowa law enforcement officials from attempting to enforce Iowa's flag abuse statutes with respect to the Petitioners and their proposed class.

D. Judgment against the Respondents for attorneys' fees and the reasonable costs of this action.

E. Such other or further equitable relief as the Court deems just in the premises.

Respectfully Submitted:



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