

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

ERIC VERLO;
JANET MATZEN; and
FULLY INFORMED JURY ASSOCIATION;

Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO, a municipality; and
ROBERT C. WHITE, in his official capacity as chief of police for Denver;

Defendants.

COMPLAINT

Plaintiffs by and through attorney David Lane, bring this action for equitable relief. The plaintiff hereby complains of defendants and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action for declaratory and injunctive relief as well as fees and costs arising under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. Section 2201 *et seq.* due to defendants' current and imminent violations of plaintiffs' rights guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

2. Plaintiffs bring this action for the constitutional injuries they are sustaining from the unconstitutional customs, practices and policies of Defendants in arresting peaceful protestors who are engaged in passing out jury nullification literature in front

of the Lindsey-Flannigan Denver County Courthouse informing passers by about the concept of jury nullification. Plaintiffs wish to hand out such literature but are chilled in their willingness and ability to do so based upon the arrests of two individuals for doing precisely that within the last two weeks, both charged with seven felony counts of jury tampering.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391.

I. PRELIMINARY STATEMENT

5. This is a civil rights action for injunctive relief arising under 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. § 2201, *et seq.*, due to Defendant's current and imminent violations of Plaintiffs rights guaranteed under the First and Fourteenth Amendments to the United States Constitution.

6. Plaintiffs bring this action for the constitutional injuries they are sustaining, and imminently will sustain, upon Defendants' threat to arrest them and any others who engage in peacefully passing out jury nullification literature to passersby on the Lindsey-Flannigan plaza located between the Denver Jail and the Denver courthouse. The Defendants, acting under color of state law, have declined to permit any such literature to be passed out in the public plaza outside of the courthouse, despite the fact

that it is commonly used for other peaceful protests and demonstrations. The Defendants have twice arrested individuals for passing out such literature and charged each with seven felony counts of jury tampering simply for handing out pamphlets describing a juror's power to engage in jury nullification. (See attached exhibit 1).

II. JURISDICTION & VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court is authorized to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201(a).

8. Venue is proper in the District Court of Colorado pursuant to 28 U.S.C. § 1391.

III. PARTIES

9. Eric Verlo is a citizen who wishes to spread the message to the public regarding the history of jury nullification as well as his belief that there exists a constitutional right of jurors to nullify if they so desire. He believes that a jury of one's peers is a bulwark between the law and a tyrannical government and wishes to inform both the public and prospective or current jurors regarding these beliefs if they wish to avail themselves of the opportunity to read his literature. He believes in jury nullification and wishes to pass out the same literature on the Lindsey-Flannigan plaza as Eric Brandt and Mark Iannicelli were passing out which caused them to be arrested. (See attached Exhibits 2-3).

10. Janet Matzen is a Denver resident and community activist. She has engaged in protests and educational campaigns repeatedly in Denver. She believes in jury nullification and wishes to pass out the same literature on the Lindsey-Flannigan plaza as Eric Brandt and Mark Iannicelli were passing out which caused them to be arrested. (See attached Exhibits).

11. The Fully Informed Jury Association (FIJA) is an association, based in Montana, who's members passionately believe in the concept of jury nullification. FIJA intends to hold an educational campaign in Denver on September 5, 2015 where its members wish to pass out the same brochures on the Lindsey-Flannigan plaza as Eric Brandt and Mark Iannicelli were passing out which caused them to be arrested. (See attached Exhibits).

12. The City and County is a municipality and is thus an entity subject to the provisions of § 1983.

13. Robert C. White is the chief of police for the City and County of Denver and he is in charge of law enforcement for the municipality.

IV. FACTUAL BACKGROUND

14. On July 27, 2015 Mark Iannicelli and Eric Brandt were passing out literature on the wide pedestrian plaza in front of the Lindsey-Flannigan courthouse which is the main criminal courthouse for the City and County of Denver.

15. The pamphlets being passed out were captioned “Your Jury Rights: True or False?” and “Fresh Air For Justice.”¹ Both pamphlets contained historical references to jury nullification as well as advisements that jurors have the actual power to nullify if they perceived an unjust law being applied to a citizen accused of a crime.

16. Both Brandt and Iannicelli were peacefully passing out literature and they had set up a table with a banner reading “Juror Information”. They engaged in conversations with those who wished to discuss the matter with them and they were in no way obstructing any passage or right of way to or from the courthouse.

17. The plaza is typically a site of protests and in fact numerous protests involving many issues have taken place on the plaza. It is a traditional public forum for such activities.

18. Iannicelli was arrested on the scene on July 27, 2015. Brandt had a warrant issued for his arrest and he was arrested several days later. Both were charged with seven felony counts of Jury Tampering under C.R.S. § 18-8-609, a class 5 felony offense. Each count in the allegations against both defendants reads as follows:

On or about July 27, 2015 [the defendant] with the intent to influence a juror’s vote, opinion or decision, and other action in a case, namely: JURY POOL MEMBER, unlawfully and feloniously attempted directly and indirectly to communicate with [name of individual], a juror, other than as a part of the proceedings in the trials of the case; in violation of section 18-8-609, C.R.S.

The Colorado Jury Tampering statute reads in relevant part:

(1) A person commits jury-tampering if, with intent to influence a juror's vote,

¹ Both pamphlets are attached to this Complaint as exhibits 2 and 3.

opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

C.R.S. §18-8-609.

19. Both Iannicelli and Brandt were incarcerated and had bonds set on them.

Both have felony cases currently pending in Denver County Court.

20. The Plaintiffs in this case are all activists who have a history of community involvement and are concerned about the state of our nation, state and city. All are deeply committed to concepts of individual freedom and liberty and all believe that the government needs to be kept in check by educating citizens regarding the rights and liberties they enjoy as citizens of the United States. Each believes that the power of jury nullification is both a fact (each juror has the actual ability to disregard unjust laws if they so desire, albeit against their oaths to follow whatever law the court gives them) and a constitutional right to do so - said right having been wrongfully stolen from the people by corrupt courts intent on protecting tyrannical laws.

21. Each Plaintiff has passed out jury nullification literature in the past and each plaintiff wishes to engage in the practice of passing out such literature on the public plaza in front of the courthouse again.

22. The arrests and prosecutions of Mr. Iannicelli and Mr. Brandt have chilled each of the Plaintiffs from engaging in the constitutionally protected activity of handing out their literature and engaging in conversations with passersby for fear that they will be arrested, prosecuted and incarcerated just as occurred with Iannicelli and Brandt.

23. Plaintiffs are seeking an injunction from this Court prohibiting the Defendants from arresting, prosecuting and incarcerating the Plaintiffs if they are merely standing in the public plaza of the courthouse passing out literature and engaging in conversations with passersby regarding jury nullification.

V. STATEMENT OF CLAIMS

**Claim for Relief
§1983 First And Fourteenth Amendment Violation –
Unconstitutional Chilling Of Free Speech**

24. All statements of fact contained within this Complaint are hereby incorporated into this claim as though fully set forth herein.

25. The actions of the Defendants in arresting, prosecuting and incarcerating people for passing out literature as described herein, has chilled the Plaintiffs in their willingness and ability to engage in constitutionally protected speech in violation of the First Amendment to the United States Constitution.

26. Plaintiffs have a right under the First Amendment both to speak and listen to ideas surrounding matters of public concern, guaranteed by the First and Fourteenth Amendments to the United States Constitution.

27. Plaintiffs and passersby who desire to engage in a protected dialogue with one another have and will continue to suffer irreparable harm if Defendants are not enjoined from punishing people for engaging in free speech.

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that this Court:

- a. Immediately hold a hearing on this complaint. Counsel for Plaintiffs have previously provided counsel for Defendants a copy of this Complaint invited counsel to participate as soon as possible;
- b. Issue a declaratory judgment that the unlawful application of the jury tampering statute by Defendants would deprive Plaintiffs of their rights to free speech in violation of the First Amendment to the Constitution of the United States;
- c. Issue an injunction against Defendants barring them from in any way applying the jury tampering statute in an unconstitutional attempt to silence free speech;
- d. Award Plaintiffs their costs, expenses and reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- e. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 17th day of August, 2015.

KILLMER, LANE & NEWMAN, LLP

s/ David Lane

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