

TEXAS CIVIL RIGHTS PROJECT

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January 8, 2009

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Director

PRESS RELEASE

BERTRAM CITIZENS SUE CITY, MAYOR, AND POLICE CHIEF FOR VARIOUS VIOLATIONS OF U.S. CONSTITUTION

* * * *

A group of Bertram citizens today filed a federal lawsuit in Austin District Court against the City of Bertram itself, its Mayor (JoAnn Stephens), and its Police Chief (David Caudle), for violating their First, Fourth, And Fourteenth Amendment rights under the U.S. Constitution.

The citizens, represented by Texas Civil Rights Project, allege that Chief Caudle has acted lawlessly and abusively toward many Bertram residents and that those incidents are numerous and border on outlandish. On the morning of August 25, 2008, for example, Caudle gratuitously shot and killed Helen Kincheloe's dog, Buddy, on her property with her granddaughter standing nearby. Caudle said Buddy was charging him, but the Kincheloes maintain that Buddy was a peaceful and friendly dog, and that Caudle's behavior was outrageous. Mayor Stephens purportedly conducted an investigation of the dog-shooting, but cleared Caudle of any wrongdoing. Questions remain as to the adequacy of her investigation and her lack of impartiality because she and Caudle are good friends.

Caudle also entered a house one evening without a warrant and pointed his gun at William Bell and his young son so that a friend of the son would go home with his intoxicated mother. Mr. Bell had been keeping the child at the father's request for the child's safety. The father and his wife were estranged. Caudle threatened Mr. Bell then and at later times that he would have CPS take his son away from him.

Former city police officer David Thomas claims Caudle improperly disposed of drug paraphernalia evidence for trial during an office move in November 2007. Mr. Thomas also claims that, in January 2008, Caudle, while driving a city patrol car, ran a red light, hitting another car in an intersection, the driver of which was pregnant. But Caudle prevented Mr. Thomas from making a full report with DPS, as required by law. In February of the same year, Caudle used his loaded handgun to point to an icon on Mr. Thomas's computer screen. He pointed the gun near Mr. Thomas' face.

According to the lawsuit, Caudle has a long history of abusive behavior. While employed as a Travis County jailer, he was disciplined nine times for excessive force or offensive behavior and eventually fired. In his termination letter, then-Sheriff Margo Frasier wrote, "There is no place ... for a person who not only uses excessive force, but also seems to delight in it." The City of Bertram hired him after his termination, for which today's plaintiffs fault the city.

The suit accuses Mayor Stephens of refusing City Council Member L. O. Pogue the right to speak with the city attorney, and consistently silencing citizens at council meetings, among other First Amendment violations. In particular, she refused to permit citizens to present a petition to fire Caudle at a council meeting. Fifty-eight people had signed the petition, alleging systemic intimidation, abuse, and threats.

TCRP director Jim Harrington, who is handling the case for the plaintiffs, said "Caudle is clearly out of control, and the city and the mayor have sanctioned and supported his wild, bizarre, and dangerous behavior despite citizen complaints. His consistent intimidation, harassment, and civil rights violations leave our clients with no alternative but to bring this lawsuit against city officials and the city."

For more information, please call Jim Harrington, at 512-474-5073.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2009 JAN -8 PM 12:17
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*

HELEN KINCHELOE, DAVID §
KINCHELOE, WILLIAM BELL, DAVID §
THOMAS, MELINDA COPELAND, §
KRISTEN BERGESON, and L.O. POGUE, §
Individually and in his office capacity as §
Mayor Pro Tem of Bertram §

Plaintiffs §

v. §

DAVID CAUDLE, individually and in §
his official capacity as Police Chief of §
Bertram; JOANN STEPHENS, §
individually and in her official capacity as §
Mayor of Bertram; and the CITY OF §
BERTRAM, TEXAS §

Defendants §

CIVIL ACTION NO.

AO9CA 010LY

JURY DEMANDED

COMPLAINT

Plaintiffs Helen Kincheloe, David Kincheloe, William Bell, David Thomas, Melinda Copeland, Kristen Bergeson, and L.O. Pogue (individually and in his official capacity as Mayor Pro Tem of Bertram) respectfully file this complaint against Defendants David Caudle (in his individual capacity and as Police Chief of Bertram), JoAnn Stephens (individually and as Mayor of Bertram), and the City of Bertram, Texas, and would show:

I. STATEMENT OF CLAIM

1. Plaintiffs seek declaratory, injunctive, and monetary relief as redress for Defendants' deprivation of their respective constitutional rights under color of law and in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. §1983. Plaintiffs also bring forward supplemental claims under Texas law.

II. JURISDICTION AND VENUE

2. Jurisdiction is based on 28 U.S.C. §§ 1331. Plaintiffs also invoke the supplemental

wandered down the street to the stop sign and back to the house. Caudle followed Buddy from there back to the house, and then parked his patrol car in the middle of the road.

10. Helen Kincheloe's granddaughter Crystal Clark came out of the house at that point, and observed Buddy walk toward Caudle and then sit, looking at Caudle. Crystal called Buddy's name. Before she could call Buddy's name again, Caudle shot twice at Buddy, dangerously near Crystal, hitting Buddy in the head and killing him. Caudle claimed that Buddy was "charging" him.

11. James Kincheloe, father of David Kincheloe, came out of the house after hearing two gun shots. Caudle was standing by the car, taking pictures of Buddy, and yelled at James, "If you come at me, I'll shoot you also!"

12. Buddy was known in the neighborhood as a peaceful dog, and had never attacked anybody. The police had never cited the owners for Buddy's behavior.

B. CAUDLE'S VIOLENT BEHAVIOR

13. In another incident in August 2008, William Bell called 911 after someone came to his house, causing a disturbance. J.F., minor, was visiting Mr. Bell's house and his son. At 2:30am, Jamie Foshay, father of J.F., called and told Mr. Bell not to give his estranged wife J.F. when she came by, because she was highly intoxicated and posed a serious risk to the child.

14. When the mother of J.F. arrived at his house, Mr. Bell refused to let her leave with the child. He also called 911.

15. Caudle arrived at the scene, and threatened Mr. Bell with having Child Protective Services (CPS) take his own son away and charging Mr. Bell with obstruction of justice, if he did not let the child leave. Caudle kicked Mr. Bell's door open, came into his house without a warrant or justifying exigent circumstances, and pulled his gun out of his holster.

16. Mr. Bell asked Caudle, "...on what charges are you going to take my son away from

evidence room.

21. On another occasion, in January 2008, Caudle wrecked a city police patrol car. The car was not properly marked, having only LED lights on the dashboard. The car went through an intersection while the light was red, and hit another's car, the driver of which was pregnant. David Thomas responded to the scene off-duty, but Caudle told him to back off. EMS responded to the scene as well, despite resistance from Caudle to involve EMS or the Department of Public Safety, which is required if an on duty officer is involved in a car accident.

22. In February 2008, Caudle again exhibited reckless behavior, when he pointed a handgun near the head of Officer Thomas at the police station. Caudle told him to click on an icon on the computer screen. Mr. Thomas responded that there were many icons, and which one did Caudle want him to click. Caudle pulled out his loaded handgun, pointed to the computer screen, and said "that one."

23. Caudle continued to pursue his harassment of Officer Thomas. On June 19, 2008, Mr. Thomas underwent gallbladder surgery, and was put on disability. On June 12, 2008, he was offered an off-duty job, which Caudle approved. On July 25, 2008, Caudle called him to his office and accused him of fraud and abuse of official capacity. Caudle claimed that Officer Thomas' off-duty job violated his claim for disability. As a result, Caudle forced him to sign separation papers terminating his employment with the department.

E. CAUDLE'S ABUSIVE HISTORY

24. Caudle has a history of abuse of power and use of excessive force. He served as a jailer for the Travis County Sheriff's Department from 1988 through 2002. During that time, he was disciplined nine times for excessive force or offensive behavior toward inmates and other jailers. Caudle was fired in 2002, after other jailers said he "grabbed [an inmate] by the testicles and penis

meeting. Krenek declined but wrote in the city minutes that the complaint was not properly initiated under Texas Government Code §§ 614.022-.614.023 and possibly under other statutes.

32. Mr. Pogue on several occasions has alleged fraud in the City's financial dealings, and questioned the accountability of Bertram city fund investments, conflicts of interest, and proper reporting of funds spent (i.e. giving city work contracts to persons who were not issued IRS Form 1099s). Pogue has also sought to meet with the city attorney to discuss the legality of actions being taken by the City Council, Mayor, and Police Chief.

33. Mayor Stephens has refused Pogue the right to speak to the city attorney without her or the council's permission.

34. As a result of his actions, the Police Chief and Mayor have both pushed for Mr. Pogue's resignation in retaliation.

G. MAYOR'S VIOLATION OF RIGHT TO PETITION

35. The Mayor has also sought to suppress Bertram citizens from petitioning City Council by refusing to accept signed petitions. Melinda Copeland, a Bertram citizen, started a petition to demand the Police Chief's firing, signed by 58 citizens, alleging a pattern of intimidation and threats. Plaintiffs Helen Kincheloe, David Kincheloe, William Bell, David Thomas, and Kristen Bergeson also signed the petition. Stephens refused the petition to be heard in the city council meeting.

V. CAUSE OF ACTION I AS TO HELEN KINCHELOE AND DAVID KINCHELOE

36. Defendants' actions, stated above, violated Plaintiffs Helen Kincheloe's and David Kincheloe' rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

37. The actions of Defendant Caudle done under color of law and his official authority, intentionally, and with complete, deliberate, conscious and callous indifference to Plaintiffs'

complete, deliberate, conscious and callous indifference to Plaintiff's constitutional rights, deprived him of his right to be free from unreasonable searches and seizures under the Fourth Amendment, and to be free from the inexcusable and arbitrary use of excessive force, proximately causing him injury. His actions also constituted assault under Texas law.

43. On information and belief, Caudle and the City of Bertram, as a matter of custom and policy, acting with deliberate, conscious and callous indifference to citizens' right to be free from unreasonable search and seizure, authorized, tolerated, and institutionalized the practices and ratified the illegal misconduct herein detailed, of entering citizens' property without an arrest or search warrant, as required by the Fourth Amendment, proximately causing Plaintiff the deprivation of those federal rights, resulting in the injury he suffered.

44. Caudle's dangerous act of threatening Bell, was shocking and outrageous, and was undertaken with the intent to cause serious emotional harm, and did cause same, especially in light of Defendants' actions that took place on the Plaintiffs' property where it could easily be foreseen that Mr. Bell's child was watching.

45. These actions give rise to a claim for relief in damages for intentional infliction of severe emotional harm.

VII. CAUSE OF ACTION III
AS TO ALL PLAINTIFFS, EXCEPT MAYOR PRO TEM

A. VIOLATION OF FIRST AMENDMENT

46. The First Amendment prohibits laws "abridging the freedom of speech . . . or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

47. The Mayor and the City's unlawful ban on Plaintiffs' fundamental right to freely speak,

57. The Texas Constitution's free speech right is more expansive than the corresponding federal guarantee. *Ex Parte Tucci*, 859 S.W.2d 1, 5 (Tex. 1993); see *O'Quinn v. State Bar of Texas*, 763 S.W.2d 397 (Tex. 1988); *Channel 4, KGBT v. Briggs*, 759 S.W.2d 939 (Tex. 1988).

58. The Texas Supreme Court has been particularly hostile to the prior restraint of speech. *Davenport v. García*, 834 S.W.2d 4, 9 (1992) ("Under our broader guarantee, it has been and remains the preference of this court to sanction a speaker after, not before the speech occurs."). A prior restraint on speech or expression is therefore presumptively unconstitutional and will withstand scrutiny only under the most extraordinary circumstances. *Id.* at 10; see also *Ex Parte Price*, 741 S.W.2d 366 (Tex. 1987).

59. As the Texas Supreme Court ruled sixty-eight years ago: "[I]t has never been the theory of free institutions that the citizen could say only what courts or legislatures might license him to say, or that his sentiments on any subject or concerning any person should be supervised before he could utter them." *Ex Parte Tucker*, 220 S.W. 75, 76 (Tex. 1920). The courts of Texas have vigorously protected the right to free speech, and have not condoned any restraint on political expression.

VIII. CAUSE OF ACTION IV AS TO MAYOR PRO TEM

60. The Mayor and City's unlawful ban on Plaintiff Pogue's fundamental right to freely speak, express his opinions, and seek redress clearly violates the First, and well-settled decisional law thereunder.

61. The refusal of the Mayor to allow the Mayor Pro Tem to seek legal counsel's advice from the city attorney violates Plaintiff's fundamental federal constitutional rights.

express his political views, petition government in the City of Bertram, and seek legal counsel on behalf of the City of Bertram.

XI. DECLARATORY JUDGMENT

71. Plaintiffs L.O. Pogue, Helen Kincheloe, David Kincheloe, William Bell, David Thomas, Melinda Copeland and Kristen Bergeson seek declaratory relief against Defendants, finding their violations of the United States and Texas Constitutions and declaring the rights of Plaintiffs thereunder, and invalidation of the City of Bertram's ordinances and policies, as stated above.

XII. NO IMMUNITIES AVAILABLE

72. Defendants acted in total disregard of the Federal and Texas Constitutions and long-standing and well-settled precedent and thus can claim no immunity or excuse for the unconstitutional ordinances and policies and applying them as they did.

73. Caudle cannot claim immunity for violating the Fourth and Fourteenth Amendment rights of Plaintiffs Helen Kincheloe and David Kincheloe. He also cannot claim immunity for violating Plaintiff Bell's Fourth Amendment rights.

74. Mayor Stephens cannot claim immunity for violating the First Amendment rights of Plaintiffs Helen Kincheloe, David Kincheloe, William Bell, David Thomas, Melinda Copeland and Kristen Bergeson. Mayor Stephens also cannot claim immunity for violating the First Amendment rights of Plaintiff Pogue.

XIII. ATTORNEY FEES

75. Pursuant to 42 U.S.C. §§ 1988, Plaintiffs are entitled to recover attorneys' fees, costs and expenses.

PRAYER FOR RELIEF

THEREFORE, Plaintiffs respectively pray that the Court:

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ATTORNEY FOR PLAINTIFFS