

MARGARET PLANE USB # 9550
American Civil Liberties Union of Utah
Foundation, Inc.
355 North 300 West
Salt Lake City, Utah 84103
Telephone: (801) 521-9862

BRIAN M. BARNARD USB # 0215
JAMES L. HARRIS, Jr. USB # 8204
Utah Legal Clinic
214 East Fifth South Street
Salt Lake City, Utah 84111-3204
Telephone: (801) 328-9531

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KEN LARSEN, J. ROBERT LATHAM, Jr.,
HEATHER RICE,

Plaintiffs

vs.

DRAPER CITY, a governmental
entity; DARRELL SMITH, Mayor
of Draper City; MAC CONNOLE,
Chief of Police; PETER LARKIN,
BILL COLBERT, RYAN DAVIES,
PAUL EDWARDS, and LAMONT SMITH
Draper City Council Members; and L.G.
“BUZZ” CUTLER City Prosecutor

Defendants.

COMPLAINT

Case No. 2:03-CV- _____

Plaintiffs, Ken Larsen, Robert Latham, and Heather Rice, by and through counsel, hereby
complain as follows:

NATURE OF ACTION

1. This civil action seeks to redress and to prevent violation of rights protected by the Constitutions of the United States and the State of Utah. Plaintiffs seek declaratory relief as to the unconstitutionality of Draper City Code § 9-26-110 (the“Ordinance”).¹ The Ordinance is facially unconstitutional because it impermissibly infringes on plaintiffs’ rights under the First Amendment of the United States Constitution and Article I, Section 15 of the Utah Constitution by prohibiting the plaintiffs from engaging in otherwise lawful and protected expression. The Ordinance is also facially unconstitutional because it violates Plaintiff Ken Larsen’s rights under the Fourteenth Amendment of the United States Constitution and Article I, Section 24 of the Utah Constitution by creating a discriminatory classification among candidates for office based on participation in a primary election. Plaintiffs seek injunctive relief prohibiting defendants from enforcing the Ordinance. Plaintiffs seek nominal damages. Plaintiffs also seek attorney fees pursuant to 42 U.S.C. §§ 1983 and 1988.

JURISDICTION AND VENUE

2. This Court has jurisdiction over plaintiffs’ federal claims pursuant to 28 U.S.C. §§1331 and 1343(3), as deprivations of rights created under the United States Constitution. The doctrine of pendent jurisdiction gives the Court jurisdiction over the plaintiffs’ claims under the Utah Constitution.

3. Pursuant to 28 U.S.C. § 1391, venue properly lies in this district and division,

¹ A copy of the challenged ordinance is attached to this complaint and is incorporated herein by reference.

where the events underlying the plaintiffs' claims took place and where the defendants maintain places of business.

PARTIES

4. Plaintiff Ken Larsen is an adult citizen and resident of Salt Lake City and County, Utah. Larsen is the Personal Choice Party's candidate for Utah Governor and is currently engaged in a political campaign for that office. As part of his campaign for office, Larsen desires to make campaign signs available to residents around the state who support his candidacy. The information on the signs is legal and truthful protected speech. Such campaign signs, commonly in the form of yard signs, are an inexpensive and effective way for candidates like Larsen to communicate their messages. Larsen is aware of the existence and terms of the challenged Ordinance. Larsen wishes to give willing residents campaign signs to display on private, residential property. Due to the restrictions imposed by the Ordinance, however, Larsen fears being fined for display of his campaign signs that do not comply with the Ordinance. Larsen has refrained from distributing campaign signs for display by private residents of Draper City.

5. Plaintiff Robert Latham is a resident of Draper City and Salt Lake County, Utah. Latham desires to display campaign signs on the yard where he resides, in part because the signs are a unique, inexpensive, and effective way for residents to communicate political views. Latham is aware of the existence and terms of the challenged Ordinance. Because the terms of the Ordinance do not allow Latham to exercise his Free Speech rights concerning a candidate

who did not participate in a primary election until 30 days immediately preceding the upcoming November 2, 2004 election, Latham has refrained from displaying such campaign signs in his yard. Further, the terms of the Ordinance do not allow Latham to display any signs urging support of a ballot initiative or proposed state constitutional amendment until 30 days preceding the upcoming November 2, 2004 election, and therefore Latham has refrained from displaying any such signs in his yard.

6. Plaintiff Heather Rice desires to display campaign signs on the yard of a private residence in Draper City, in part because the signs are a unique, inexpensive, and effective way to communicate political views. Rice is aware of the existence and terms of the challenged Ordinance. Because the terms of the Ordinance do not allow Rice to exercise her Free Speech rights concerning a candidate who did not participate in a primary election until 30 days immediately preceding the upcoming November 2, 2004 election, Rice has refrained from displaying such campaign signs in the yard. Further, the terms of the Ordinance do not allow Rice to display any signs urging support of a ballot initiative or proposed state constitutional amendment until 30 days preceding the upcoming November 2, 2004 election, and therefore Rice has refrained from displaying any such signs.

7. Defendant DRAPER CITY is a governmental entity organized and existing under the laws of the State of Utah. The City is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

8. Defendant DARRELL SMITH is Mayor of Draper City. He is sued in his official capacity. The Mayor's powers and duties include supervising the administration and

enforcement of all laws and ordinances of the City.

9. Defendant L.G. “BUZZ” CUTLER is the City Prosecutor of Draper City. His powers and duties include prosecuting persons charged with violations of ordinances of the City including the Ordinance.

10. Defendant MAC CONNOLE is Chief of Police of Draper City. He is sued in his official capacity. The Draper City Police Department provides law enforcement services for Draper City. The Chief of Police’s powers and duties include supervising and administering the police department, which is responsible for enforcing all ordinances of the City.

11. Defendants PETER LARKIN, BILL COLBERT, RYAN DAVIES, PAUL EDWARDS, and LAMONT SMITH are members of the Draper City Council. The Draper City Council establishes policies and programs for Draper City. The Draper City Council also has the responsibility to delegate enforcement of the Draper City Code to the Draper City Department of Code Enforcement.

FACTUAL BACKGROUND

12. The Ordinance (Draper City Code § 9-26-110(1)(G)) provides in pertinent part: “(i) Political signs are temporary signs supporting the candidacy for office or urging action on any other matter on the ballot of primary, general, and special elections. (ii) Such signs shall be limited to a period immediately preceding the election of thirty (30) calendar days.” The Ordinance also places durational limits on the display of signs for candidates who participate in primary elections, candidates running in national elections, candidates and issues in special

elections, and signs urging support for or against voter initiatives and proposed constitutional amendments.

13. On information and belief, Draper City does not prohibit the display of all advertisements or messages on all private, residential property within Draper City. To the contrary, Draper City's Ordinance specifically limits the display of "political signs" which are used by candidates for office and by residents for expressive speech.

14. On information and belief, Draper City does not prohibit the display of all campaign signs 30 days before election, because those candidates who participate in primary elections are permitted to display signs for a longer period. At least one candidate has cited the Ordinance and urged its enforcement through removal of his opponent's signs because they were being displayed more than 30 days before the general election.

FIRST CAUSE OF ACTION

(Declaratory and Injunctive Relief to Enforce United States Constitution)

15. Plaintiffs incorporate herein by this reference the foregoing paragraphs as if set forth fully herein.

16. The Ordinance chills the exercise of free expression as protected by the First Amendment to the United States Constitution.

17. The Ordinance prohibits legal expressive conduct based upon the content of the expression.

18. No compelling state interest justifies the restriction of plaintiffs' right to expressive

activity, and the Ordinance unconstitutionally chills and/or silences otherwise lawful and protected speech without justification either as a valid time, place, and manner restriction or as a regulation that directly advances a substantial governmental interest without being more extensive than necessary to serve that interest.

19. Plaintiffs are entitled to declaratory relief that the Ordinance interferes with free expression as protected by the United States Constitution.

20. Plaintiffs are entitled to injunctive relief that defendants not enforce the Ordinance because it is in violation of the Free Expression Clause of the United States Constitution.

SECOND CAUSE OF ACTION

(Declaratory and Injunctive Relief to Enforce Utah Constitution)

21. Plaintiffs incorporate herein by this reference all paragraphs above as if set forth fully herein.

22. The Ordinance chills the exercise of free expression as protected by Article I Section 15 of the Utah Constitution.

23. The Ordinance prohibits legal expressive conduct based upon the content of the expression.

24. No compelling state interest justifies the restriction of plaintiffs' right to expressive activity, and the Ordinance unconstitutionally chills and/or silences otherwise lawful and protected speech without justification either as a valid time, place, and manner restriction or as a regulation that directly advances a substantial governmental interest without being more

extensive than necessary to serve that interest.

25. Plaintiffs are entitled to declaratory relief that the ordinance interferes with free expression protected by the Utah Constitution.

26. Plaintiffs are entitled to injunctive relief that defendants not enforce the Ordinance because it is in violation of the Article I, Section 15 of the Utah Constitution.

THIRD CAUSE OF ACTION

(Declaratory and Injunctive Relief to Enforce United States Constitution)

27. Plaintiffs incorporate herein by this reference all paragraphs above as if set forth fully herein.

28. The Fourteenth Amendment to the Constitution of the United States prohibits unequal treatment of persons who should be treated alike. The federal Civil Rights Law, 42 USC § 1983, prohibits states and territories under federal jurisdiction from enacting statutes that violate this right.

29. The Ordinance creates a classification that treats political candidates differently according to requirements that define when a political candidate need or need not participate in a primary election. When a candidate participates in a primary election, the candidate is permitted to display signs 30 days prior to the primary, and those signs may remain in place until the upcoming general election. However, when a candidate does not participate in a primary election, the candidate is prohibited from displaying campaign signs until 30 days before the general election. This classification holds even in the case where candidates for the same office

are not all required to participate in the primary election. The Ordinance also creates classifications according to participation in a national or state campaign.

30. No legitimate or sufficient government interest exists that is furthered by this classification. As a result, the Ordinance violates the equal protection guarantee of the Constitution of the United States.

31. Plaintiff Ken Larsen is entitled to declaratory relief that the ordinance interferes with equal protection as guaranteed by the Constitution of the United States.

32. Plaintiff is entitled to injunctive relief that defendants not enforce the Ordinance because it is in violation of the Fourteenth Amendment of the United States Constitution.

FOURTH CAUSE OF ACTION

(Declaratory and Injunctive Relief to Enforce Utah Constitution)

33. Plaintiffs incorporate herein by this reference all paragraphs above as if set forth fully herein.

34. Article I, Section 24 of the Utah Constitution prohibits unequal treatment of persons who should be treated alike.

35. The Ordinance creates a classification that treats political candidates differently according to requirements that define when a political candidate need or need not participate in a primary election. When a candidate is required to participate in a primary election, the candidate is permitted to display signs 30 days prior to the primary, and those signs may remain in place until the upcoming general election. However, when a candidate is not required to participate in

a primary election, the candidate is prohibited from displaying campaign signs until 30 days before the general election. This classification holds even in the case where candidates for the same office are not all required to participate in the primary election.

36. No legitimate or sufficient government interest exists that is furthered by this classification. As a result, the Ordinance violates the uniform operation of the law guarantee of the Utah Constitution.

37. Plaintiff is entitled to declaratory relief that the ordinance interferes with uniform operation of the law as guaranteed by the Utah Constitution.

38. Plaintiff is entitled to injunctive relief that defendants not enforce the Ordinance because it is in violation of Article I, Section 24 of the Utah Constitution.

FIFTH CAUSE OF ACTION

(Damages: United States Constitution)

39. Plaintiffs incorporate herein by this reference the foregoing paragraphs as if set forth fully herein.

40. Larsen is a candidate for Utah Governor. As a candidate, he would like willing citizens of Draper City to display his campaign signs on their private, residential property.

41. P is a resident of Draper City and would like to exercise her right to free expression by displaying campaign signs on her property.

42. Larsen has not distributed, and P has not displayed, campaign signs in Draper City.

43. Larsen's and P's conduct as set forth above was caused by fear that the defendants

would enforce the Ordinance and cite Larsen and P for displaying campaign signs.

44. Larsen and P have suffered damages as a result of the existence of the Ordinance and fear of enforcement by defendants.

45. Larsen and P are entitled to nominal damages in the sum of one dollar (\$1.00) for the harm as set forth above based upon the United States Constitution.

RELIEF

WHEREFORE, Plaintiffs demands relief as follows:

- a. For declaratory judgment that Draper City Code § 9-26-110 violates the First Amendment of the United States Constitution;
- b. For declaratory judgment that Draper City Code § 9-26-110 violates Article I, Section 15 of the Utah Constitution;
- c. For declaratory judgment that Draper City Code § 9-26-110 violates the Fourteenth Amendment of the United States Constitution;
- d. For declaratory judgment that Draper City Code § 9-26-110 violates Article I, Section 24 of the Utah Constitution;
- c. For a preliminary and permanent injunction enjoining defendants from enforcing Draper City Code § 9-26-110;
- d. For nominal damages (\$1.00) as against Draper City for the violation of plaintiffs' rights under the United States Constitution occasioned by the Ordinance;
- e. For plaintiffs' reasonable attorney fees and court costs in pursuing this action; and

f. For such other and further relief as the Court deems just and proper.

DATED this 14th day of SEPTEMBER 2004.

AMERICAN CIVIL LIBERTIES
UNION OF UTAH FOUNDATION, INC.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

By _____
MARGARET PLANE

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing COMPLAINT to:

TODD J GODFREY
MAZURAN & HAYES
2118 East 3900 South Ste. 300
SALT LAKE CITY, UT, 84124

on the 14th day of SEPTEMBER 2004, postage prepaid in the United States Postal Service.

AMERICAN CIVIL LIBERTIES
UNION OF UTAH FOUNDATION, INC.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

By _____
MARGARET PLANE