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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.

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND / OR
MOTION FOR PRELIMINARY
INJUNCTION**

Case No. 2:03-CV- _____

PLAINTIFFS, by and through counsel, MARGARET PLANE of the American Civil Liberties Union of Utah Foundation, Inc., and BRIAN M. BARNARD and JAMES L. HARRIS, Jr. of the Utah Legal Clinic, move this Court to issue a preliminary injunction or a temporary restraining order granting immediate equitable relief.

PRELIMINARY STATEMENT

Plaintiffs Larsen, Latham, and Rice desire to exercise their right to freedom of expression through the display of political campaign signs in Draper, Utah. The ordinance challenged herein prevents these actions by plaintiffs. This 42 U.S.C. § 1983 action seeks, *inter alia*, immediate injunctive relief for improper interference with the constitutional rights of the plaintiffs.

Details of defendants' restrictions are set out in the Complaint, the Affidavit of Plaintiff Larsen, (9/13/04), the Affidavit of Plaintiff Latham (9/13/04), and the Affidavit of Plaintiff Rice (9/13/04), and the Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and / or Preliminary Injunction.

This motion is further supported by a memorandum of even date and the papers and pleadings set forth above.

ARGUMENT

INFRINGEMENT OF FIRST AMENDMENT

The challenged conduct of the defendants constitutes an infringement of plaintiffs' right to free expression as protected by the First Amendment to the United States Constitution and Article I, Section 7 of the Utah Constitution. Plaintiffs are entitled to equitable relief temporarily enjoining enforcement of the ordinance.

IMMEDIATE INJUNCTIVE RELIEF

Defendants' anticipated, pending and continuing violations of plaintiffs' rights described above are real and substantial. Harm will be suffered by plaintiffs in being

inhibited from engaging in first amendment protected expression. Plaintiffs' harm is immediate and irreparable in nature. That harm justifies and warrants the issuance of a preliminary injunction to allow plaintiff Larsen to distribute campaign signs for display and plaintiffs Latham and Rice to display campaign signs on private property in Draper, Utah.

ELEMENTS FOR A PRELIMINARY INJUNCTION

The requirements for the issuance of a temporary restraining order and/or a preliminary injunction are: (1) substantial likelihood that the moving party will prevail on the merits; (2) the moving party will otherwise suffer irreparable injury; (3) the moving party's threatened injury outweighs any damage to the non-moving party if the injunction issues; and, (4) if issued, the injunction will not be adverse to public interest. ULBA v. Leavitt, 256 F.3d 1061, 1066 (10th Cir. 2001); SCFC ILC, Inc. v. VISA USA, Inc., 936 F.2d 1096, 1098 (10th Cir. 1991).

Based upon the papers and pleadings on file herein, all these elements are established.

RELIEF

WHEREFORE, plaintiffs seek and are entitled to:

A temporary restraining order and/or a preliminary injunction ordering defendants not to enforce the challenged ordinance during the pendency of this action.

That no bond should be required for the issuance of the preliminary injunction because no harm will come to defendants if a temporary restraining order and/or a preliminary injunction were to erroneously issue.

A proposed temporary restraining order is submitted with this motion and supporting memo.

DATED this ____ day of SEPTEMBER 2004.

AMERICAN CIVIL LIBERTIES
UNION OF UTAH FOUNDATION, INC.

UTAH LEGAL CLINIC
Attorneys for Plaintiff

by _____
MARGARET PLANE

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR MOTION FOR PRELIMINARY INJUNCTION to:

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

on the _____ 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 Plaintiff

By _____
MARGARET PLANE