

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MIDDLETOWN FOOD NOT BOMBS;
ABRAHAM BOBMAN; FRED CARROLL;
and DAVE ROZZA

Plaintiffs

v.

CITY OF MIDDLETOWN, and J. ROBERT
GALVIN, COMMISSIONER OF THE
DEPARTMENT OF PUBLIC HEALTH,
STATE OF CONNECTICUT

Defendants.

CIVIL ACTION NO.

June 19, 2009

COMPLAINT

I. INTRODUCTION

1. This is a suit brought to redress the deprivation under color of state law of certain rights, privileges and immunities secured to the plaintiffs by the Constitution and laws of the United States. The plaintiffs, Middletown Food Not Bombs, Abraham Bobman, Fred Carroll, and Dave Rozza bring this complaint against the defendants, City of Middletown and J. Robert Galvin, Commissioner of the Department of Public Health, State of Connecticut, alleging violations of the plaintiffs' rights under the First and Fourteenth Amendments to the Constitution of the United States, and Article First, Sections Four and Fourteen of the Constitution of the State of Connecticut, arising from the defendants' actions, including the instigation and issuance of a cease and desist

order dated April 1, 2009 and delivered to Middletown Food not Bombs on April 3, 2009, barring the plaintiffs from public food sharing.

II. THE PARTIES

2. The plaintiff, Middletown Food Not Bombs, is an organization of activists opposed to war and violence who prepare and share vegan meals with members of the community on public sidewalks on Main Street, in Middletown, Connecticut.

3. The plaintiff, Abraham Bobman, is an individual activist with Middletown Food Not Bombs and a Middletown resident. Bobman was arrested by Middletown police for sharing meals on Main Street in Middletown on May 3, 2009.

4. The plaintiff, Fred Carroll, is an individual activist with Middletown Food Not Bombs and a Middletown resident. Carroll was given a citation by Middletown police for sharing meals on Main Street in Middletown on or about April 26, 2009.

5. The plaintiff, Dave Rozza, is an individual activist with Hartford Food Not Bombs, and a Hartford resident. Rozza has expressed an intent to assist Middletown Food Not Bombs with its political activities, including meal preparation and sharing on Main Street in Middletown.

6. The defendant City of Middletown is a municipality organized under the laws of the State of Connecticut. At all relevant times described herein, the actions of defendant City of Middletown and its designees were taken under color of state law.

7. The defendant J. Robert Galvin is the Commissioner of the Department of Public Health, an agency of the State of Connecticut. At all relevant times described herein, the actions of defendant Galvin and his designees were taken under color of state law. Defendant Galvin is named in his official capacity.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the federal claims in this Complaint under 28 U.S.C. §§1331 and 1343(a)(3). Venue is proper in the federal district court for the District of Connecticut pursuant to 28 U.S.C. §1391.

9. With respect to the state law claims, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 in that the state law claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

IV. FACTS

10. Middletown, Connecticut is a city of about 47,000 residents, approximately 7.5% of whom live in poverty, and a greater percentage of whom do not have adequate access to sufficient and/or nutritionally valuable food.

11. The plaintiff Middletown Food Not Bombs is a loosely structured organization of political activists opposed to war and violence.

12. Middletown Food Not Bombs includes individuals who have a common commitment to the preparation and public sharing of healthy, vegan meals with others as a form of political action, and who are motivated by a common core belief: that food is a right which society has a responsibility to provide to all of its members.

13. At various times for approximately ten years, members of Middletown Food Not Bombs have participated in preparing and publicly sharing meals and political conversation on Sunday afternoons on the sidewalk outside of 617 Main Street in Middletown.

14. The address of 617 Main Street is the site of St. Vincent DePaul Place, a non-profit organization that provides basic human services to poor and homeless people. St. Vincent DePaul Place operates a soup kitchen that serves meals six days a week; it does not serve meals on Sundays.

15. Middletown Food Not Bombs is a non-hierarchical organization: anyone is welcome to participate in preparing, serving, and consuming Middletown Food Not Bombs meals.

16. Middletown Food Not Bombs members share meals and invite all members of the community to share meals and political conversation with them.

17. Middletown Food Not Bombs intends to convey a particularized message, that of non-violence and food security for all people, and that message is understood by those who view its expressive activities.

18. The plaintiffs are engaged in expressive activity protected by the First Amendment of the United States Constitution, as well as Article First of the Connecticut Constitution.

19. In or about November 2008 and continuing through March 2009, the Middletown Health Department, an agency of the City of Middletown, conducted an investigation of the activities of plaintiff Middletown Food Not Bombs and its members.

20. Upon information and belief, the Middletown Health Department commenced and/or carried out its investigation at the direction and/or urging of defendant Galvin or his designees, employees of the Department of Public Health of the State of Connecticut.

21. On or about April 3, 2009, Investigator Fred Rehm, Middletown Department of Public Health, met with Middletown Food Not Bombs representatives, including plaintiffs Abe Bobman and Fred Carroll. Rehm told the plaintiffs that in order for them to continue their meal sharing activities, all meals had to be prepared in a kitchen registered with and inspected by the Middletown Health Department, and all meals had to be served in accordance with the health codes.

22. Plaintiffs Bobman and Carroll explained to Rehm the nature and core beliefs of Middletown Food Not Bombs and asserted that their meal sharing activities were protected political speech.

23. Plaintiffs Bobman and Carroll also told Rehm that they did not believe that their meal sharing activities were subject to the Middletown Health Department's jurisdiction because they were not serving or distributing food but voluntarily sharing their meals with others in a manner similar to a picnic.

24. Notwithstanding the plaintiffs' explanation, at the conclusion of the meeting Rehm delivered to Carroll a cease and desist order to prevent the organization and its members from sharing meals on Main Street in Middletown.

25. The Cease and Desist Order alleged violations of Connecticut General Statutes §7-148(c)(10), 19a-36, and 19a-230, the State of Connecticut Public Health Code §19-13-B42, and the Middletown Municipal Code §166-3.

26. The statutory and regulatory sections cited do not apply to the activities of Middletown Food Not Bombs or its members, inasmuch as they are not engaged in

serving or distributing food. Middletown Food Not Bombs and its members voluntarily share meals with others.

27. On or about April 26, 2009, Middletown Food Not Bombs conducted its weekly political activities, including meal sharing, on Main Street in Middletown. This included hanging a sign on a tree as well as preparing and sharing a vegan meal with members of the public.

28. While Middletown Food Not Bombs members were conducting their political activities, including meal sharing, plaintiff Fred Carroll was given a citation by a Middletown Police Officer for violation of the Cease and Desist Order.

29. On or about May 3, 2009, Middletown Food Not Bombs conducted its weekly political activities, including meal sharing, on Main Street in Middletown. This included hanging a sign on a tree as well as preparing and sharing a vegan meal with members of the public.

30. While Middletown Food Not Bombs members were conducting their political activities, including meal sharing, Police Officers Sevigny and Puorro confiscated and, on information and belief, destroyed the plaintiffs' prepared food at a nearby dumpster.

31. Middletown Police Officers also arrested plaintiff Abraham Bobman and charged him with a misdemeanor for violating the Cease and Desist Order.

COUNT ONE: 42 U.S.C. §1983 VIOLATION OF THE PLAINTIFFS' RIGHT TO FREE SPEECH AND TO ASSEMBLE

1. The plaintiffs re-state and incorporate herein by reference paragraphs 1 through 31, above.

32. The plaintiffs' actions are clearly established protected political speech and assembly under the First Amendment and the Fourteenth Amendment of the United States Constitution.

33. The actions of defendant Galvin and/or his designees in directing and/or urging defendant City of Middletown to investigate and take action against the plaintiffs were intended to and did interfere with the plaintiffs' clearly established political speech and assembly.

34. Defendant City of Middletown's requirement that the plaintiffs' meal preparation take place in a kitchen registered with and inspected by the Middletown Health Department, and that their meal sharing be conducted in accordance with the health code constitute an undue and excessive burden on the plaintiffs' right to speak freely and assemble.

35. The defendants, by the actions described above, taken under color of state law, have unlawfully deprived the plaintiffs of rights, privileges and immunities secured by the United States Constitution.

36. The defendants' conduct as described above was carried out with willful and wanton disregard for the plaintiffs' clearly established constitutional rights.

COUNT TWO: VIOLATION OF THE CONSTITUTION OF THE STATE OF CONNECTICUT

1. The plaintiffs re-state and incorporate herein by reference paragraphs 1-36 above.

37. The plaintiffs' actions are clearly established protected political speech and assembly under the Article First Section Four and Fourteen of the Constitution of the State of Connecticut.

38. The actions of defendant Galvin and/or his designees in directing and/or urging defendant City of Middletown to investigate and take action against the plaintiffs were intended to and did interfere with the plaintiffs' clearly established political speech and assembly.

39. Defendant City of Middletown's requirement that the plaintiffs' meal preparation take place in a kitchen registered with and inspected by the Middletown Health Department, and that their meal sharing be conducted in accordance with the health code constitute an undue and excessive burden on the plaintiffs' right to speak freely and assemble.

40. The defendant, by the actions described above, taken under color of state law, has unlawfully deprived the plaintiffs of rights, privileges and immunities secured by the Constitution of the State of Connecticut.

41. The defendants' conduct as described above was carried out with willful and wanton disregard for the plaintiffs' clearly established constitutional rights.

DEMAND FOR RELIEF

WHEREFORE, the plaintiffs request that this Court:


1. Permanently enjoin the defendants, their agents, successors, employees and attorneys from continuing and maintaining any practice, policy, custom or usage of denying, withholding, conditioning, limiting, or otherwise interfering with the rights of the plaintiffs as secured by the First and Fourteenth Amendments to the Constitution of the United States and/or Article First, Sections Four and Fourteen of the Constitution of the State of Connecticut;
2. Award the plaintiffs compensatory damages;
3. Award the plaintiffs punitive damages;
4. Award the plaintiffs their attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
5. Grant to the plaintiffs such other relief as may be just and proper.

Request for Trial by Jury

Plaintiffs respectfully request a trial by jury as to all claims to which they are entitled.

THE PLAINTIFFS,

By: _____


Elizabeth A. Conklin ct27663
Peter Goselin ct06074
Livingston, Adler, Pulda, Meiklejohn
& Kelly P.C.
557 Prospect Avenue
Hartford, CT 06105-2922
(860) 233-9821