

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

WILLIAM J. KELLY)	
)	
Plaintiff,)	
v.)	No.
)	
JESSE WHITE, in his capacity)	
as Illinois Secretary of State)	
)	
Defendant.)	

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Now comes the Plaintiff, William J. Kelly, through his attorneys, Mark D. Roth and Orum & Roth LLC, and for his Complaint for Declaratory Judgment and Injunctive Relief states:

PARTIES AND JURISDICTION

1. Plaintiff, William J. Kelly (“Plaintiff” or “Kelly”), is a citizen of the State of Illinois.
2. Defendant, Jesse White, not individually but solely as Secretary of State of Illinois, is in charge of managing and operating various State of Illinois buildings, including but not limited to the State of Illinois Capitol Building. Defendant also operates the Illinois Capitol Police, the agency that oversees security at State of Illinois buildings that are under the Defendant’s management and operation.
3. This is an action brought pursuant to 42 U.S.C. § 1983, alleging the Defendant’s violation of Plaintiff’s civil rights. This Court has jurisdiction pursuant to 28 U.S.C. § 1343(3), which provides for District Court jurisdiction over actions to redress the deprivation under color of any right or privilege accorded by the United States

Constitution. This Court has jurisdiction over the State law claim pursuant to 28 U.S.C. § 1367.

4. The Illinois Secretary of State has offices throughout the State of Illinois, including numerous offices within the Northern District of Illinois. The Defendant is also in charge of operation, maintenance and security at numerous buildings throughout the State of Illinois, including within this District. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTS SUPPORTING CAUSES OF ACTION

5. In December 2009, the State of Illinois Capitol Building contained displays celebrating various observances. The Defendant has discretion to approve displays placed in the Capitol Building. In December 2009, a sign was placed in the Capitol Building, approved by the Defendant, that read as follows:

At the time of the winter solstice, let reason prevail. There are no gods, no devils, no angels, no heaven or hell. There is only our natural world. Religion is just a myth and superstition that hardens hearts and enslaves minds.

6. Defendant approved of the placement of the sign and was at all times aware of the existence of the sign being in the Capitol Building. The sign was present in the Capitol Building for in excess of two weeks.
7. The Defendant violated the Illinois Administrative Code in allowing the placement of the sign in the Capitol Building. 71 Ill. Adm. Code ch. 11, Section 2005.40 b.) prohibits the placement of signs in the Capitol Building, and specifically provides as follows:

No person or organization shall camp, erect a tent, monument (except as authorized by the Secretary of State to commemorate a deceased public official or a historical event), structure, portable toilet, platform, sign, or similar device on the grounds of or within the State Capitol, Visitor's Center, the State Library, the Howlett Building, or the Stratton Building, (except as provided in subsection i) of this Section. (Emphasis added)

8. Section i) of 71 Ill. Adm. Code ch. 11, Section 2005.40 i), does not provide any exception to the prohibition against signs being placed in the Capitol Building.

Section i.) provides as follows:

No displays or structures (including tents) in the buildings or on the grounds may be erected without the permission of the Director pursuant to Section 2005.50(d) of this Part. Permission shall be granted only if the display structure is part of symbolic expression in the exercise of free speech guaranteed by the First Amendment to the United States Constitution and Article I, Sections 4 and 5 of the 1970 Illinois Constitution. No more than 2 tents or small structures may be erected at the locations designated by the Director, which location will not impede pedestrian or vehicular traffic or substantially damage the Capitol grounds, i.e. damage to grass or grounds which would require replacement. The only locations which are authorized for structures and displays shall be the paved areas between the Howlett Building and the Capitol Building, in the north front of the Howlett Building and between the Stratton Building and the Archives Building. No structures or displays will be placed on grass areas which have an underground watering system on them.

9. The Defendant improperly approved the sign in the Capitol Building, as signs are excluded from the Capitol Building pursuant to 71 Ill. Adm. Code ch. 11, Section 2005.40 b.).
10. The sign was placed by a nativity scene, or crèche, and directly next to a decorated fir tree.
11. The Capitol Building is visited by persons of all walks of life and by numerous school aged children, including but not limited to grade school children. The sign was the

only sign at or around the displays and was directly next to the decorated fir tree, leading reasonable persons who regularly visit the Capitol Building to conclude that the sign was endorsed by the Defendant as a state sponsored opposing view to the displays. This is especially true in light of the fact that allowing the sign violates the very laws that the Defendant is obligated to follow. The sign was unlike any of the displays. The sign was not symbolic, but rather consisted solely of language intentionally denigrating religion and specifically denigrating Christianity, Catholicism, Judaism, Islam and others that worship God and/or believe in the concepts heaven and hell.

12. Prior to the afternoon of December 23, 2009, Kelly was forced to come into direct and unwelcomed contact with the sign by carrying out his activities as a citizen of the State of Illinois and also his activities as a candidate for an elected position with the State of Illinois. On the afternoon of December 23, 2009 Plaintiff, Kelly, was present at the Capitol Building. At that time, Kelly was again confronted with the sign. Kelly turned the sign, so that the sign was face down. Kelly did so, in part, on the basis that the sign constituted hate speech, and because the Defendant's approval and placement of the sign in violation of the Constitution and its own governing law violated the Establishment Clause's prohibition against government disapproval of religion. The Capitol Police, a division run by the Defendant, escorted Kelly from the rotunda in the Capitol Building to another area of the Capitol Building. The Capitol Police then detained Kelly and escorted him from the building. Kelly was not allowed to return to the Capitol Building and therefore was required to alter his behavior as a result of the sign. Further, Kelly was the subject of a Capitol Police incident report.

13. At all relevant times, there was in existence the First Amendment to the United States Constitution, otherwise known as the Establishment Clause. The Establishment Clause is made applicable to the States through the 14th Amendment to the United States Constitution.
14. The First Amendment of the United States Constitution, in conjunction with the 14th Amendment, forbids State action that has the effect of disapproving, inhibiting or evincing hostility toward religion. The United States Supreme Court has specifically held, for instance, that the Constitution “affirmatively mandates accommodation, not merely tolerance, of all religions, and **forbids hostility toward any ...**”
15. The language in the sign at issue stating “Religion is just a myth and superstition that hardens hearts and enslaves minds” is speech that evidences disapproval and hostility toward religion. Further, that speech is attributable to the Defendant by virtue of the Defendant approving the sign, despite the Illinois Administrative Code expressly prohibiting the sign, and by its placement of the sign next to the described displays in the Capitol Building.
16. The totality of the language of the sign is hostile and inflammatory to all religions, including but not limited to Christianity, Catholicism, Judaism, Islam and others that worship God and/or believe in the concepts heaven and hell.
17. The Defendant improperly exceeded his authority and violated 71 Ill. Adm. Code ch. 11, Section 2005.40 b.) by allowing and endorsing the sign to be placed in the Capitol Building. The Defendant's actions of placing the illegal sign prominently in the Capitol Building for grade school aged children, children of all ages and adults in

direct contravention to governing law, unquestionably evincing hostility to religion in general and also to specific religions, constitutes a violation of the Establishment Clause.

FIRST CAUSE OF ACTION

(Violation of Establishment Clause)

18. Plaintiff realleges and restates the allegations contained in paragraphs 1 to 17 as and for the allegations contained in paragraph 18 of this First Cause of Action.
19. The Defendant's actions violate the Establishment Clause of the United States Constitution.
20. An actual controversy exists as to whether the sign at issue violates the Establishment Clause.
21. On information and belief, the same or a similar sign will be erected next year and each year thereafter unless enjoined by this Court.
22. Plaintiff has no adequate remedy to prevent the same or a similar sign from being placed in the Capitol Building or any building under the control of the Defendant.

Wherefore, the Plaintiff, William J. Kelly, requests that this Court:

- a. Declare the rights of the parties;
- b. Declare that the sign alleged herein violates the Establishment Clause of the United States Constitution;
- c. Declare that the Defendant exceeded his authority in allowing the sign to be placed, or placing the sign, in the State of Illinois Capitol Building;
- d. Enter a preliminary injunction and subsequent permanent injunction prohibiting Defendant from placing or allowing to be placed the sign at issue or any such similar

sign in the Capitol Building of the State of Illinois and any other State of Illinois buildings under the Defendant's control;

- e. Award the Plaintiff his fees and costs; and
- f. Award the Plaintiff such other and further relief as this Court deems just.

SECOND CAUSE OF ACTION

(Violation of Illinois Administrative Code)

- 23. Plaintiff realleges and restates the allegations contained in paragraphs 1 to 17 as and for the allegations contained in paragraph 23 of this Second Cause of Action.
- 24. Plaintiff alleges that the Defendant's actions violate 71 Ill. Adm. Code ch. 11, Section 2005.40 b.).
- 25. An actual controversy exists as to whether the sign at issue violates 71 Ill Adm. Code ch., 11, Sections 2004.40 b.).
- 26. On information and belief, the same or a similar sign will be erected next year and each year thereafter unless enjoined by this Court.
- 27. Plaintiff has no adequate remedy to prevent the same or a similar sign from being placed in the Capitol Building or any building under the control of the Defendant.

Wherefore, the Plaintiff, William J. Kelly, requests that this Court:

- a. Declare the rights of the parties;
- b. Declare that the sign alleged herein violates 71 Ill Adm. Code ch., 11, Section 2005.50 b.);
- c. Declare that the Defendant exceeded his authority in allowing the sign to be placed, or placing the sign, in the State of Illinois Capitol Building;

- d. Enter a preliminary injunction and subsequent permanent injunction prohibiting Defendant from placing or allowing to be placed the sign at issue or any such similar sign in the Capitol Building of the State of Illinois and any other State of Illinois buildings under the Defendant's control;
- e. Award the Plaintiff his fees and costs; and
- f. Award the Plaintiff such other and further relief as this Court deems just.

Respectfully submitted,

/Mark D. Roth/

Attorney for Plaintiff

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