

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

GREG GELBURD,)
)
)
 Plaintiff,)
)
 v.) Case No. 7:18cv215
)
 VICKI CHRISTIANSEN, Interim Chief,)
 United States Forest Service,)
 1400 Independence Ave., SW)
 Washington, DC 20250-1111)
)
 And)
)
 JOBY L. TIMM, Supervisor,)
 George Washington and Jefferson)
 National Forest,)
 5162 Valleypointe Parkway)
 Roanoke, Virginia 24019)
)
 Defendants.)

COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW the Plaintiff, Greg Gelburd, by and through the undersigned attorneys, and files this Complaint against the Defendants , Vicki Christiansen and Joby L. Timm, for injunctive relief. In support thereof, the Plaintiff alleges and avers as follows:

Parties

1. The Plaintiff, Greg Gelburd, D.O., is an adult resident of Charlottesville, Virginia He is licensed to practice medicine by the Commonwealth of Virginia and Board Certified in Family Medicine by the American Board of Family Medicine. Gelburd received his Doctor of Osteopathy degree in 1982 and has been practicing and treating patients since 1985. Gelburd is a

founder of Downtown Family Medicine in Charlottesville and served on the Medical Executive Committee of Martha Jefferson Hospital in Charlottesville.

2. Defendant Vicki L. Christiansen is the Interim Chief of the United States Forest Service, an agency of the United States government within the Department of Agriculture that manages and controls places designated by law as national forests, including the George Washington and Jefferson National Forest. Defendant Christiansen is an officer and agent of the United States government.

3. Defendant Joby L. Timm is the current supervisor of the George Washington and Jefferson National Forest and responsible for issuing orders and directives relating to the management and control of the George Washington and Jefferson National Forest. Defendant Timm is an officer and agent of the United States government.

Jurisdiction and Venue

4. This Court has jurisdiction over this action under 28 U.S.C. § 1331, as it is a civil action arising under the Constitution and laws of the United States and is an action against federal officers for specific relief on the basis that the officers' actions are (1) beyond their statutory powers or (2) even if within their statutory powers, the powers themselves or the manner in which they are exercised are constitutionally void.

5. This action seeks remedies under 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 65.

6. Venue for this action properly lies within the United States District Court for the Western District of Virginia, Roanoke Division, under 28 U.S.C. § 1391(e) and Local Rule 2(b) of this Court, as it is an action against officers and employees of an agency of the United States and one of the defendants resides within Roanoke County, Virginia.

Statement of Facts

7. In October 2017, the Federal Energy Regulatory Commission issued a certificate of public convenience and necessity under the Natural Gas Act approving a project known as the Mountain Valley Pipeline (MVP). The project, owned and developed by Mountain Valley Pipeline, LLC, involves the construction of a 303-mile long pipeline to carry natural gas from northwest West Virginia to southern Virginia.

8. The MVP route runs through George Washington and Jefferson National Forest in Giles County, Virginia. National Forests are largely forest and woodland areas owned collectively by the people of the United States through the federal government, and managed by the United States Forest Service. Construction of the MVP is and will result in the irreversible destruction of large swaths of trees and forested areas in the George Washington and Jefferson National Forest.

9. The environmental damage that will result from the construction and subsequent operation of the MVP has caused public outcry against the project since it was announced. Citizens have engaged in numerous activities protesting the MVP, including marches and demonstrations seeking to convince the government to halt the project.

10. The protest activities include so-called “tree sitting,” whereby individual scale a tree located within the planned path of the MVP and occupy it constantly to protest the proposed destruction of the environment by the MVP. Protesters also have placed tall poles within the planned MVP path, with platforms at the top of the poles with living spaces, or “monopods,” that can be occupied by persons.

11. On or about March 27, 2018, an adult female known as “Nutty” began occupation of a monopod atop a 45-foot pole on a ridgeline of Peters Mountain in Giles County, Virginia, within the George Washington and Jefferson National Forest. Nutty, who is 28-years old, has

occupied the monopod continuously since that time and is exercising her First Amendment rights on public land to protest the MVP project and the cutting of trees which the project entails.

12. At the time Nutty began occupation of the monopod, she was lawfully on public lands and within the right of way established for the MVP project.

13. When Nutty's presence in the monopod within the National Forest and her protest activity became known to administrators of the George Washington and Jefferson National Forest, the administrators, including Defendant Timm, began efforts to force Nutty out of the monopod and suppress the message she is attempting to convey about the MVP project.

14. On April 7, 2018, Defendant Timm issued Order Number 08-08-11-18-05, titled "Revised Mountain Valley Pipeline Project Emergency Closure." This order closed off and barred the public from extensive areas adjacent to the MVP right of way through the National Forest. Violations of the order are punishable by a fine of up to \$5,000 and/or imprisonment of up to six months.

15. The purpose and effect of Order Number 08-08-11-18-05 is to prevent persons from approaching Nutty and the pole she occupies and to prevent persons from providing food, water, or other provisions to Nutty.

16. Plaintiff Gelburd learned of Nutty's occupation of the monopod in the National Forest in April of 2018. He also learned that, because of Order Number 08-08-11-18-05 and other actions of Defendant Timm and Forest Service agents acting under his authority, Nutty has been denied any additional provisions or water since she occupied the monopod on or about March 27. Because of this Gelburd became concerned for Nutty's health and well-being.

17. Plaintiff Gelburd's concern for the well-being and health of Nutty is rooted not only in his training as a physician and the ethical obligations of his profession, but also in his religious

beliefs that compel him to use his knowledge and skills as a physician to assist persons in need of medical assistance, particularly the poor and disadvantaged. Gelburd's beliefs are based on Biblical passages, including the following:

For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in. Matthew 25:35 (New International Version).

Do not neglect to show hospitality to strangers, for by so doing some people have entertained angels without knowing it. Hebrews 13:2 (New International Version).

Is it not to share your food with the hungry and to provide the poor wanderer with shelter—when you see the naked, to clothe them, and not to turn away from your own flesh and blood? Isaiah 58:7 (New International Version).

If you pour yourself out for the hungry and satisfy the desire of the afflicted, then shall your light rise in the darkness and your gloom be as the noonday. Isaiah 58:10 (English Standard Version).

18. Plaintiff Gelburd is a Christian who believes that each person is made in the image of Jesus and that he is called to try to assist those in need as he would try to assist Jesus.

19. Plaintiff Gelburd regularly and continually practices his religious belief in providing medical assistance to those in need. He made four trips to Louisiana in the wake of Hurricane Katrina to run medical clinics for days or weeks at a time. He has traveled to Honduras 35 times with other members of his church to conduct week-long “medical brigades” in mountain neighborhoods where people do not have sufficient access to medical care. He also has made approximately 15 trips to Haiti with his church in order to provide assistance. And in December 2017, Plaintiff Gelburd went to a refugee camp in Leros, Greece, where he spent several weeks providing medical assistance to refugees.

20. On May 5, 2018, Plaintiff Gelburd hiked to the area of George Washington and Jefferson National Forest where Nutty is occupying the monopod and attempted to reach her and conduct a medical examination of her to determine whether she has any medical conditions that

require attention and treatment. However, he was prevented from reaching the monopod occupied by Nutty by police tape cordoning off the area and could go no closer than approximately 150 feet from the pole. Additionally, Gelburd was prevented from approaching Nutty by Order Number 08-08-11-18-05, the threat that he would be arrested under that order, and the actions of Forest Service employees and agents who were present and actively barring entry into the cordoned off area.

21. Plaintiff Gelburd also learned that in addition to preventing Nutty from receiving provisions and water, Forest Service agents and employees are attempting to drive Nutty out of the monopod by burning fires near the pole, sending smoke up into the monopod, and by fixing bright spotlights on Nutty's monopod at darkness.

22. Additionally, Plaintiff Gelburd's attempts to call out to Nutty and ask her questions about her health were obstructed by the operation of a generator placed at the base of the pole directly below Nutty. The operation of the generator was and is specifically intended to impede and impair communication with Nutty by persons on the ground.

23. By calling in loud voices, Plaintiff Gelburd and Nutty were able to communicate briefly. Plaintiff Gelburd determined that Nutty was concerned about her health and wanted Gelburd to examine her and provide medical advice and assistance. However, Gelburd was prevented by Order Number 08-08-11-18-05 and by the Forest Service agents and employees from obtaining access to Nutty and conducting the examination necessary to provide adequate advice and treatment for Nutty.

24. Plaintiff Gelburd is concerned that Nutty may have serious medical conditions that require immediate attention and treatment. Because Nutty has extremely limited food and water, Gelburd believes she is not receiving the nutrition she needs and that she will suffer from severe

weight loss. Nutty also is at a risk for pneumonia and of a breakdown of her skin, which could lead to infections. All these conditions would be exacerbated by the lack of sleep that would be caused by the Forest Service's use of smoke, spotlights, and noise to keep Nutty awake and drive her out of the monopod. Gelburd also is concerned that Nutty is suffering emotionally due to her isolation and her being targeted by smoke, light and noise by Forest Service employees and agents.

25. These serious medical conditions can only be determined and addressed if a physician has access to Nutty and the opportunity to examine her up close and in person. Such an examination would also require that a physician interview and question Nutty in light of her physical condition perceived by the physician.

26. Because of his religious and moral beliefs, Plaintiff Gelburd believes that he is compelled to examine Nutty and provide whatever treatment and advice is necessary to relieve the physical and emotional harm Nutty is suffering or will inevitably suffer in light of her situation.

First Cause of Action

Violation of Religious Freedom Restoration Act—42 U.S.C. §§ 2000bb et seq.

27. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 26 above.

28. The Defendants and government agents acting under the authority and direction of the Defendants have prevented Plaintiff Gelburd from conducting a medical examination of Nutty through the promulgation of Order Number 08-08-11-18-05 and by physical force and intimidation.

29. By preventing Plaintiff Gelburd from examining Nutty and providing her with medical advice and assistance, the Defendants and government agents acting under the authority and direction of the Defendants, have substantially burdened Plaintiff Gelburd's exercise of his

religious belief, to wit, that he is called and required to provide medical care and assistance to persons in need, within the meaning of 42 U.S.C. § 2000bb-1(a).

30. The substantial burden imposed on Plaintiff Gelburd exercise of his religious beliefs is not in furtherance of any compelling government interest, and in any event is not the least restrictive means of furthering any compelling government interest.

31. Because the Defendants and those acting under the authority and direction of the Defendants have substantially burdened Plaintiff Gelburd's exercise of his religious beliefs without adequate justification, under 42 U.S.C. § 2000bb-1(c) Plaintiff Gelburd is entitled to appropriate relief against the Defendants allowing him to exercise those beliefs by conducting a medically-appropriate examination of Nutty to determine the existence of an relieve any serious medical conditions afflicting Nutty.

Second Cause of Action

Violation of the First Amendment's Free Exercise Clause

32. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 31 above.

33. The Defendants and government agents acting under the authority and direction of the Defendants have prevented Plaintiff Gelburd from conducting a medical examination of Nutty through the promulgation of Order Number 08-08-11-18-05 and by physical force and intimidation.

34. By preventing Plaintiff Gelburd from examining Nutty and providing her with medical advice and assistance, the Defendants and government agents acting under the authority and direction of the Defendants, have prevented Plaintiff Gelburd's from exercising his religious belief that he is called and required to provide medical care and assistance to persons in need.

35. The Defendant's actions preventing Plaintiff Gelburd from exercising his religious beliefs is not in furtherance of any compelling government interest, and in any event is not the least restrictive means of furthering any compelling government interest, and so violates Plaintiff Gelburd's rights under the Free Exercise Clause of the First Amendment to the United States Constitution.

36. Because the Defendants and those acting under the authority and direction of the Defendants have prevented Plaintiff Gelburd from exercising of his religious beliefs without adequate justification, Plaintiff Gelburd is entitled to appropriate relief against the Defendants allowing him to exercise those beliefs by conducting a medically-appropriate examination of Nutty to determine the existence of an relieve any serious medical conditions afflicting Nutty.

Third Cause of Action

Violation of First Amendment's Freedom of Speech Clause

37. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 36 above.

38. By their communications on May 5, 2018, Plaintiff Gelburd and Nutty established an intent to form a doctor-patient relationship between them, under which Nutty desired to be examined by Plaintiff Gelburd and to receive medical advice and care.

39. The Defendants and government agents acting under the authority and direction of the Defendants, through the promulgation of Order Number 08-08-11-18-05 and by physical force, intimidation, and other means, have prevented Plaintiff Gelburd from conducting a medical examination of Nutty and communicating to Nutty information and advice relating to her physical condition that would be beneficial, if not essential, to Nutty's health and well-being.

40. By preventing Plaintiff Gelburd from obtaining the necessary information to evaluate the health and well-being of Nutty and from providing her information that would be beneficial, if not essential, to her health and well-being, the Defendants and government agents acting under the authority and direction of the Defendants, have violated Plaintiff Gelburd's freedom of speech guaranteed and protected by the First Amendment to the United States Constitution.

41. Plaintiff Gelburd is entitled to appropriate relief against the Defendants allowing him to effectively exercise his right to freedom of speech with respect to rendering advice and care to Nutty.

Fourth Cause of Action

Violation of Fifth Amendment Due Process Duty to Protect

42. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 41 above.

43. The Defendants and government agents acting under the authority and direction of the Defendants, by the affirmative exercise of the power and authority of the United States government, have restrained the liberty of Nutty, and others who would seek to aid her, and prevented her from providing for and obtaining things that constitute basic human needs, including food, clothing, and medical care.

44. By preventing Nutty from obtaining basic human necessities, and in particular medical care, the Defendants and government agents acting under the authority and direction of the Defendants have a duty under the Due Process Clause of the Fifth Amendment to the United States Constitution to protect Nutty.

45. The Defendants and government agents acting under the authority and direction of the Defendants have violated their duty under the Due Process Clause to protect Nutty by failing to allow her to receive medical care.

46. As a doctor chosen by Nutty to provide medical care, Plaintiff Gelburd has standing to raise and enforce the constitutional right of Nutty to receive adequate medical care when her liberty to do so is restrained by government agents.

47. Plaintiff Gelburd is entitled to appropriate relief against the Defendants allowing him to provide the medical care and assistance to which Nutty is entitled under the Due Process Clause of the Fifth Amendment.

WHEREFORE, Plaintiff Gelburd respectfully requests that this honorable Court:

A) Enter judgment declaring that Plaintiff is entitled and allowed to conduct an in-person medical examination of Nutty and to provide Nutty with the advice and care consistent with the Plaintiff's medical judgment;

B) Enter a temporary restraining order and/or preliminary injunction forbidding the Defendants and those acting under the direction and supervision of the Defendants from interfering with any actions by the Plaintiff in connection with conducting a medical examination of Nutty and providing Nutty with medical advice and treatment; and

C) Such other and further relief to which the Plaintiff is entitled as the Court may deem just and proper.

Respectfully submitted,

GREG GELBURD, D.O.

By counsel

Counsel for Plaintiff

/s/ Tammy L. Belinsky

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