

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 12 2018

JAMES W. MCCORMACK, CLERK
By: [Signature] DEPT. CLERK
PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

ADAM AND EVE JONESBORO, LLC

V.

CASE NO. 3:18cv21-DPM

**HAROLD PERRIN, IN HIS OFFICIAL CAPACITY
AS MAYOR OF THE CITY OF JONESBORO,
ARKANSAS,**

DEFENDANT

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF,
PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION**

Comes now the plaintiff, Adam and Eve Jonesboro, LLC, by and through its counsel Lloyd W.

“Tre” Kitchens, and for its Complaint states:

This case assigned to District Judge Marshall
and to Magistrate Judge [Signature]

STATEMENT OF THE CASE

1. This is a civil action arising under the First and Fourteenth Amendments to the Constitution of the United States, and under Article 2, sections 3 and 6 of the Arkansas Constitution. This action is brought pursuant to 42 U.S.C. § 1983, and pursuant to the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-101, *et seq.*, to redress the deprivation of plaintiffs' federal and state constitutional rights by defendants acting under color of law, A.C.A. §14-1-302.

2. The statute in question states:

(2) “Adult bookstore or video store” means a commercial establishment that offers for sale or rent any of the following as one (1) of its principal business purposes:

(B) An instrument, a device, or paraphernalia that is designed for use in connection with a specific sexual activity;
A.C.A. §14-1-302

3. Upon purchase of the property located at 1518 Caraway Road, Jonesboro, Arkansas, Adam and Eve Jonesboro, LLC, made application for and was granted privilege license

by the City of Jonesboro in 2016 and 2017. *See attached Exhibit #1*, licenses. These licenses have the specific address of the location of the store.

4. Adam and Eve Jonesboro, LLC is a business that currently sells a combination of lingerie, adult apparel, costumes, bachelorette supplies, novelties, games, and massage oils and personal lubricants, and that is intended to sell a combination of adult and nonadult products for off-premises use and consumption.

5. Adam and Eve Jonesboro, LLC does not operate, and is not intended to operate, booths, stalls, or partitioned portions of a room or individual rooms for the on-premises viewing of movies or other entertainment with adult content. Adam and Eve Jonesboro, LLC does not present or feature, and will not present or feature, live adult entertainment or dancing of any sort.

6. Plaintiffs have been informed by City Attorney Carol Duncan, defendant's agent, that the chosen location of the store requires application for and receipt of a conditional use permit, based upon its zoning.

7. Defendants also allege that the store does not meet state and local city statutes regarding distance requirements from churches, daycares, and residential use areas.

8. City officials allege that sale of nonobscene, constitutionally protected adult movies, magazines, and other adult items will put Adam and Eve Jonesboro, LLC at risk of being classified an "adult book store" as defined by the statute above.

9. The statute is an unconstitutional prior restraint on protected speech, is unconstitutionally vague and overbroad, is not narrowly tailored to serve a substantial government interest, is arbitrarily and capriciously enforced by the defendants, and violates plaintiffs' right to equal protection.

10. Plaintiff pray for injunctive relief on the ground that the statute is on its face and as applied or threatened to be applied to plaintiffs is unconstitutional. Plaintiff prays for a temporary restraining order and preliminary injunctive relief as it is suffering serious and irreparable damage to its fundamental constitutional rights, are likely to succeed on the merits of this action, and the public interest favors such relief.

11. Plaintiff prays the Court issue a declaratory judgment declaring the statute unconstitutional on its face and as applied or threatened to be applied to plaintiff, or, in the alternative, that Adam and Eve Jonesboro, LLC, as intended to be operated, is not an “adult book store” and is not subject to the statute.

PARTIES

12. Plaintiff Adam and Eve Jonesboro, LLC, is a limited liability company duly organized under the laws of the State of Arkansas, and is licensed and authorized to transact business in Arkansas.

13. Defendant Harold Perrin is sued in his official capacity only as the Chief Executive of the City of Jonesboro, ie. the Mayor.

14. Defendant The City of Jonesboro, Arkansas, is a city duly organized and existing under the laws of Arkansas.

JURISDICTION AND VENUE

15. The Court has personal jurisdiction over Mayor Perrin as he is an individual and resident of the Eastern District of Arkansas.

16. The Court has personal jurisdiction over the City of Jonesboro, Arkansas, as it is a political subdivision of the State of Arkansas organized and existing within the Eastern District of Arkansas.

17. The Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

18. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

19. This Court may enter a declaratory judgment as provided in 28 U.S.C. § 2201 and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

20. This Court may grant preliminary and permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

21. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391.

FACTS COMMON TO THE COUNTS

I.

ADAM AND EVE JONESBORO, LLC

22. Adam and Eve Jonesboro, LLC is located at 1518 South Caraway Road, Jonesboro, Craighead County, Arkansas, within the city limits of Jonesboro, Arkansas.

23. Adam and Eve Jonesboro, LLC contains approximately 3,000 square feet of retail space.

24. Plaintiff intends to sell a mix of adult and non-adult merchandise at Adam and Eve Jonesboro, LLC, with a majority of the retail space at Adam and Eve Jonesboro, LLC devoted to the sale of lingerie, costumes, adult apparel, and related items, and a minority of the retail space devoted to the sale of some items that could be used in a sexual manner, but also including non-adult merchandise such as candles, gift bags, and novelties.

25. On or about 1/25/18 Plaintiff's counsel sent an agent of the defendant, Mr. Renshaw, a correspondence asking why the code enforcement officer refused to give plaintiff a certificate of occupancy so the business could open. *See attached Exhibit #2, Email.*

26. The same day, counsel for the Defendant sent a reply email that included factual and legal inaccuracies. *See attached Exhibit #3, Email.* First, the email claims that the privilege licenses issued by the Defendant for two years did not approve a specific location, when a review of the license does in fact specify 1518 South Caraway Road, Jonesboro. Further the email claims that the store doesn't meet state law (the statute) and local statutes for distance requirements from churches, daycares and residential uses. These statutes only apply to an "adult book store" which the Plaintiff is not.

27. Further, other retailers who sell the exact same products as the Plaintiff are literally next door to churches, and operate with no problem from the Defendant.

**COUNT I
UNCONSTITUTIONAL PRIOR RESTRAINT**

28. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1 through 27 as though fully set forth herein.

29. The statute being employed by the Defendants to prevent the Plaintiff from opening, on its face and as applied to plaintiffs, is void as an unconstitutional prior restraint on speech and expression in violation of the First and Fourteenth Amendments to the United States Constitution, and in violation of Article 2, sections 3 and 6 of the Arkansas Constitution as follows:

a. The statute does not define what constitutes a "principle business purpose" to qualify the Plaintiff as an "adult book store."

b. The limitations imposed by the statute serves no legitimate purpose, is not a proper time, place, or manner regulation, and is not narrowly tailored to serve a significant and legitimate governmental purpose unrelated to the suppression of constitutionally protected free speech and expression;

c. The statute, on its face and as applied to the plaintiffs, restrains the plaintiff's retail sale of merchandise, based on the content of the merchandise;

30. Through the statute, defendants are acting under color of law to deprive plaintiff of its federal and state constitutional rights in violation of 42 U.S.C. § 1983 and the Arkansas Civil Rights Act.

31. Plaintiff is entitled to a preliminary and permanent injunction prohibiting defendants from continuing to violate its constitutional rights to be free from prior restraints on free speech and expression, and are further entitled to a declaration that the statute, on its face and as applied to the plaintiff, is an unconstitutionally void as a prior restraint.

COUNT II
UNCONSTITUTIONAL VAGUENESS AND OVERBREADTH

32. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1 through 31 as though fully set forth herein.

33. The statute, on its face and as applied to plaintiff, is void for vagueness and is overbroad in violation of the Fourteenth Amendment to the United States Constitution and Article 2, sections 3 and 6 of the Arkansas Constitution, as follows:

- a. The Statute does not define "principal business purpose"; and
- b. The definition of an adult bookstore in the statute is neither narrowly tailored nor linked to a substantial governmental interest;

34. Because of the undefined terms in the statute, on its face and as applied to plaintiff, the statute lacks definite limits and is too vague to inform men and women of common intelligence of what conduct is allowed by and what conduct is prohibited by the statute.

35. Because the statute is neither narrowly tailored nor linked to a substantial governmental interest, on its face and as applied to plaintiffs, the statute is unconstitutionally overbroad.

36. Through the Statute, defendants are acting under color of law to deprive plaintiff of its federal and state constitutional rights in violation of 42 U.S.C. § 1983 and the Arkansas Civil Rights Act.

37. Plaintiff is entitled to a preliminary and permanent injunction prohibiting defendants from continuing to violate their constitutional rights, and are further entitled to a declaration that the Statute, on its face and as applied to the plaintiff, is unconstitutionally vague and overbroad.

**COUNT III
EQUAL PROTECTION**

38. Plaintiff repeats and re-alleges each and every allegation of paragraphs 1 through 37 as though fully set forth herein.

39. Other commercial establishments in Jonesboro offer adult merchandise.

40. On information and belief, those retailers operate without the imposition of the statute at issue here.

41. The Defendants have been fully aware of these retailers selling the very same items as the Plaintiff seeks to sell for years.

42. On information and belief, defendants have never prosecuted or threatened to prosecute these retailers.

43. But for the deprivation of rights caused by the risk of enforcement of the Statute, adult merchandise identical to that sold at these retailers would be on sale and available for retail purchase at Adam and Eve Jonesboro, LLC.

44. The Statute, on its face and as applied to plaintiff, violates the plaintiff's constitutional right to equal protection, as follows:

a. The Statute is enforced arbitrarily and capriciously by the defendants, and will be arbitrarily and capriciously enforced by the defendants against the plaintiff; and,

b. The Statute on its face and as applied is a means and a tool to prevent plaintiff from doing business.

45. Through the Statute, defendants are acting under color of law to deprive plaintiff of its federal and state constitutional rights in violation of 42 U.S.C. § 1983 and the Arkansas Civil Rights Act.

46. Plaintiff is entitled to a preliminary and permanent injunction prohibiting defendants from continuing to violate its constitutional right to equal protection, and are further entitled to a declaration that the Statute, on its face and as applied to the plaintiff, is unconstitutionally void for violation of the plaintiffs' right to equal protection.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for an order of this Court:

A. Granting preliminary and permanent injunctions restraining the Defendants, and all individuals acting in concert or in participation with them, from enforcing A.C.A. §14-1-203;

B. Declaring plaintiff's rights under the statute is unconstitutional on its face or as applied to Adam and Eve Jonesboro, LLC;

C. Awarding the plaintiff its reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

D. Awarding the plaintiff such other and further relief as this Court deems just, necessary, and proper.

Respectfully submitted,

The Brad Hendricks Law Firm
500 C Pleasant Valley Drive
Little Rock, AR 72227
(T) 501-221-0444
(F) 501-661-0196
tkitchens@bradhendricks.com

By: [Signature]
Lloyd W. "Tre" Kitchens, ABN 99075

STATE OF ARKANSAS
COUNTY OF Pulaski

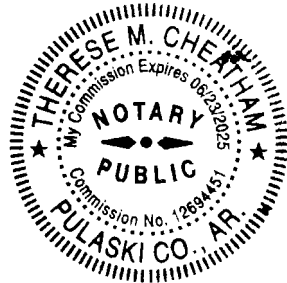
VERIFICATION

The undersigned hereby states on oath that the facts in the foregoing Verified Complaint are true and correct to the best of his information, knowledge and belief.

ADAM AND EVE JONESBORO, LLC

By: [Signature]
Evelyn Norman
Title: Owner

SUBSCRIBED AND SWORN before me on this 12th day of February, 2018.



[Signature]
Notary Public

MY COMMISSION EXPIRES:

06/23/2025

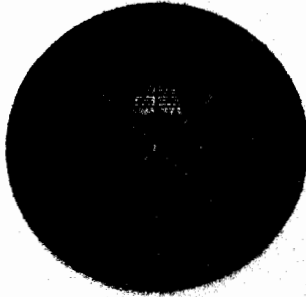
License # 000000005405

2017

**CITY OF JONESBORO, AR
PRIVILEGE LICENSE**

Adam and Eve

**1510 S University Ave
Little Rock, AR 72204**



License is Hereby Granted to: Adam and Eve

Physical Location: 1518 S Caraway Rd

License Expires: 12/31/2017*

***License is considered Active after this date while renewal process is ongoing.**

Owner: Evelyn Norman

Type of Business: 085 - Retail Businesses

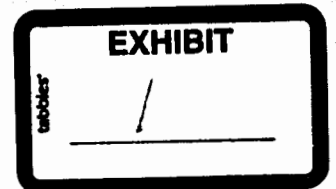
Annual License Fee: \$10.00

**It is the responsibility of the business owner(s) to notify this office (in writing) of any changes of
business name, business address, business ownership, or if the business has closed.**

Ordinance 4.04.04 Each license shall be posted in a conspicuous place

Becky Sharp, City Collector

**300 S. Church St. Ste. 106
Jonesboro, AR 72401
(870)932-3042**



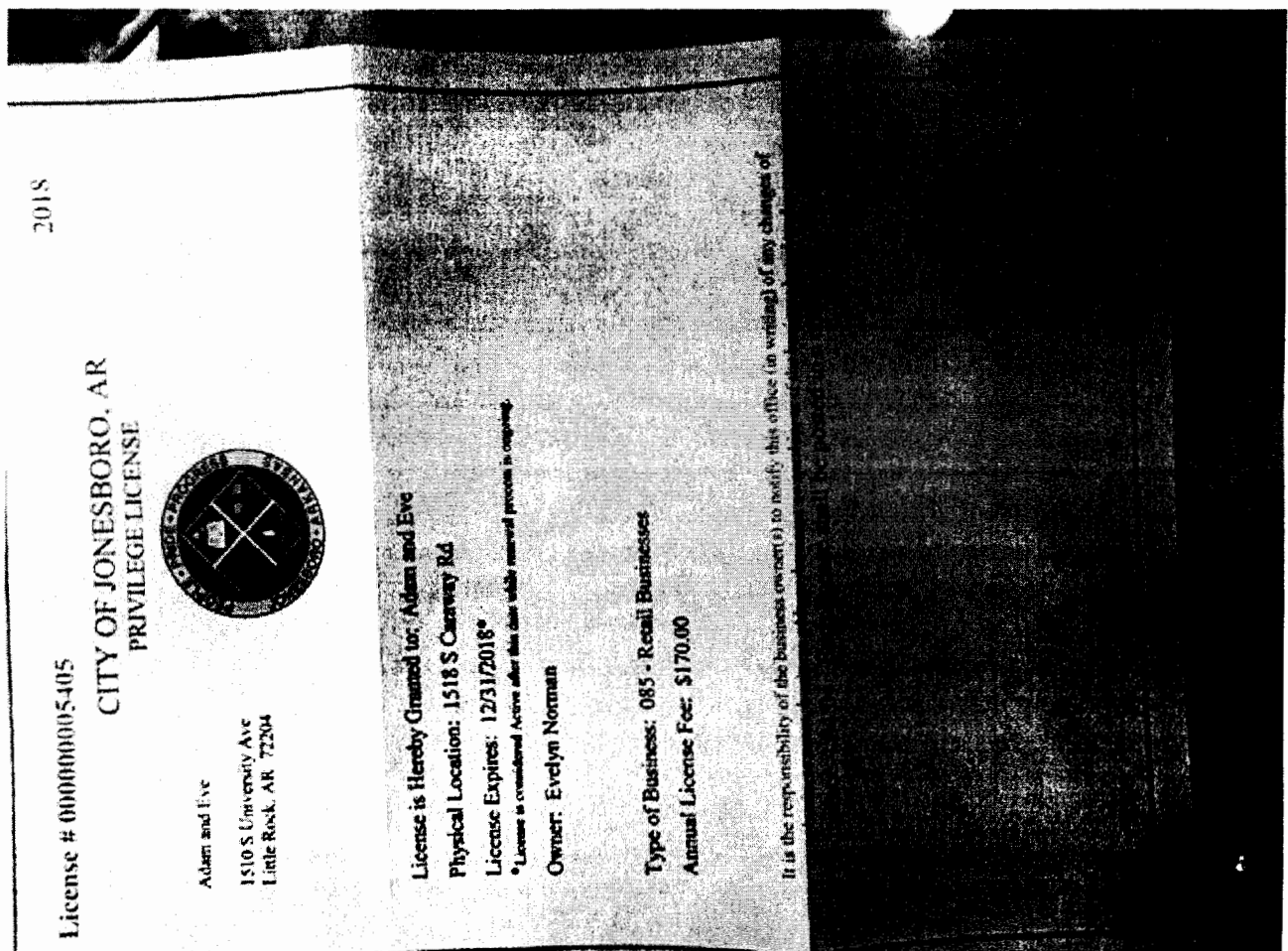
Samantha Hester

From: Stephen Norman <namronwaterworks@aol.com>
Sent: Monday, February 12, 2018 11:15 AM
To: Samantha Hester
Subject: Fwd: permit

Sent from my iPhone

Begin forwarded message:

From: Eve Norman <evelyn_norman2@aol.com>
Date: February 12, 2018 at 11:13:01 AM CST
To: namronwaterworks@aol.com



Sent from my iPhone

Tre Kitchens

From: Tre Kitchens
Sent: Thursday, January 25, 2018 3:34 PM
To: 'trenshaw@jonesboro.org'
Cc: Audra Murray
Subject: Adam and Eve, 1518 Caraway Rd.

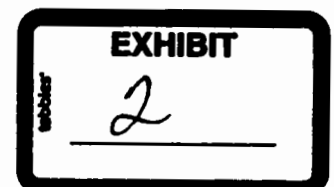
Mr. Renshaw,

I represent the above referenced business. To the best of my knowledge, this business has been granted privilege license by the city for the past two years. My client tells me now that you are refusing to provide him a certificate of occupancy so he can open his business, and will not put the rejection or the reason in writing. I'm sure this is a simple miscommunication.

Before we have to take additional legal action, please let me know if there is a reason you won't provide a certificate of occupancy for this wholly legal business, and the statutory basis for any such refusal.

I hope we can work this out quickly with little acrimony.

I look forward to hearing from you.



Tre Kitchens

From: Carol Duncan <CDuncan@jonesboro.org>
Sent: Thursday, January 25, 2018 3:50 PM
To: Tre Kitchens
Cc: Edward Tanner; Tim Renshaw; Jessica Thomason
Subject: Adam and Eve

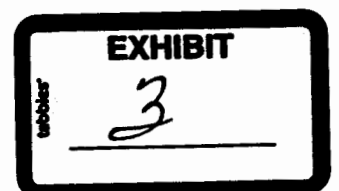
Mr Kitchens,

I received a copy of your correspondence with our Building Inspector. I am currently out of town attending a conference, so I do not have access to all of my information on this matter. However, the privilege license issued to Adam and Eve was to do business in Jonesboro. It did not approve a specific location. The location chosen by the store requires them to apply for and receive a conditional use permit, based upon its zoning. In addition, pursuant to both state law and our local city ordinances, it does not meet the distance requirement from churches, daycares and residential uses.

If you have additional questions, I am happy to attempt to answer them while away via email, or I would be happy to discuss this matter further next week when I return to my office.

Thank you,
Carol M. Duncan
City Attorney
City of Jonesboro

Sent from my iPad



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

3:18cv21-DPM

I. (a) PLAINTIFFS
ADAM AND EVE JONESBORO, LLC
(b) County of Residence of First Listed Plaintiff CRAIGHEAD
(c) Attorneys (Firm Name, Address, and Telephone Number)
Lloyd W. "Tre" Kitchens, The Brad Hendricks Law Firm
500C Pleasant Valley Drive
Little Rock, AR 72227

DEFENDANTS
HAROLD PERRIN, IN HIS OFFICIAL CAPACITY AS MAYOR OF
THE CITY OF JONESBORO, ARKANSAS
County of Residence of First Listed Defendant CRAIGHEAD
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
1st & 14th Amendments to the US Constitution
Brief description of cause:
Civil action to redress deprivation of Plaintiff's federal and state constitutional rights by defendants

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE
02/12/2018
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE