

Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEREK TUCSON, ROBIN SNYDER,
MONSIEREE DE CASTRO, and ERIK
MOYA-DELGADO,

Plaintiffs,

v.

CITY OF SEATTLE, ALEXANDER
PATTON, TRAVIS JORDAN, DYLAN
NELSON, JOHN DOES (#1-4), and JANE
DOES (#1-2),

Defendants.

No. [Cause Number]

COMPLAINT

JURY TRIAL REQUESTED

I. INTRODUCTION

1.1 This is a civil rights action brought under 42 U.S.C. § 1983 for violations of Plaintiff’s rights under the First, Fourth, and Fourteenth Amendments.

1.2 Seattle Municipal Code (SMC) 12A.08.020 is unconstitutional on its face and as applied to Plaintiffs. This ordinance purports to criminalize any writing on any surface not owned by the writer. Even if the writer had the owner’s express permission or reasonably believed the writing was lawful, police can still arrest the writer—and only later, at trial, could the writer present the owner’s express permission or the writer’s reasonable belief as an “affirmative defense.” SMC 12A.08.020 makes no allowance whatsoever that the owner impliedly authorized the writing. Thus, the ordinance sweeps within its criminal ambit an inordinate degree of entirely innocent and constitutionally protected expressive activities,

1 affording police an astonishing degree of discretion regarding when, and against whom, to
2 enforce it.

3 1.3 In this case, Defendants deployed that discretion to retaliate against criticisms
4 written by Plaintiffs, four peaceful protesters who Defendants arrested for writing political
5 messages in ordinary charcoal and children’s sidewalk chalk in an open and traditional public
6 forum. Defendants selectively enforced SMC 12A.08.020 against Plaintiffs’ criticisms while
7 tolerating politically neutral and pro-government chalking. Such viewpoint discrimination, too,
8 the Constitution does not allow.

9 1.4 The arrests began on the evening of January 1, 2021, outside the Seattle Police
10 Department (SPD) East Precinct when Plaintiff Derek Tucson wrote the words “peaceful protest”
11 on a concrete wall that the Defendant City of Seattle built over the public sidewalk around the
12 precinct building. Plaintiff Tucson wrote this political message with a piece of charcoal found on
13 the ground near the wall. Although the writing caused no damage to the wall, and would wash
14 off in the rain, Defendants arrested Plaintiff Tucson for the sole reason that he wrote this political
15 message. When several bystanders – the other three Plaintiffs in this case – responded by writing
16 similar messages in charcoal and children’s sidewalk chalk, Defendants arrested them too.



1 available images of Defendant Patton, appears to confirm that Defendant Patton was one of the
2 two officers who seized Plaintiff Tucson. Public records do not identify the second officer,
3 whose name is not presently known to Plaintiffs. Video footage shows this unidentified officer,
4 John Doe #1, to be male, white, bald, and wearing a dark blue facial covering.

5 4.5 The charcoal writing of “peaceful protest” was inherently temporary, could have
6 been wiped off with little effort, would wash away in the rain, and caused no damage to the
7 function or aesthetic value of the temporary concrete “eco-block” wall.

8 4.6 Members of the public who were nearby during Plaintiff Tucson’s arrest,
9 including Plaintiff Snyder, verbally protested the arrest and repeatedly demanded an explanation.
10 Plaintiff Tucson’s arrest, and each subsequent arrest of the other Plaintiff’s, had the effect of
11 angering witnesses and escalating tension and rhetoric.

12 4.7 After Plaintiff Tucson was taken inside the precinct building, members of the
13 public wrote additional messages on the temporary wall in ordinary charcoal and children’s
14 sidewalk chalk.

15 4.8 The messages were political in nature and included the phrases “BLM” (“Black
16 Lives Matter”), “FTP” (“Fuck the Police”), “Free DT,” “Free Robin,” “Free them all,” “Abolish
17 SPD,” “Kill KKKops,” “Killers →” (arrow pointing at the precinct), “New Year No New
18 Names,” and “Fuck SPD.”

19 4.9 All of these political messages were written in ordinary charcoal or children’s
20 sidewalk chalk, inherently temporary, could have been wiped off with little effort, would wash
21 away in the rain, and caused no damage to the function or aesthetic value of the temporary
22 concrete “eco-block” wall.

23 4.10 Approximately four minutes after arresting Plaintiff Tucson, five uniformed
24 officers employed by Defendant City appeared, two emerging from a marked police vehicle and
25 three from the precinct building, to arrest Plaintiff Snyder on suspicion of having written one or
26 more of the political messages identified above in paragraphs 4.8 and 4.9. Plaintiff Snyder did
27 not consent to, but did not resist, the arrest.

1 4.11 Two of the officers, one from the vehicle and one from the precinct, physically
2 seized Plaintiff Snyder. Although public records indicate that Defendant Patton was the
3 “arresting officer” for Plaintiff Snyder, video footage of the arrest does not appear to show
4 Defendant Patton participating in the seizure. Instead, Plaintiff Snyder appears to have been
5 seized by Defendant Nelson, whose sworn narrative admits his participation in the arrest. The
6 name of the second officer who seized Plaintiff Snyder is presently unknown to Plaintiffs. Video
7 footage shows this unidentified officer, John Doe #2, to be male, white, dark haired, and wearing
8 a lighter-blue facial covering.

9 4.12 Approximately twelve minutes after Plaintiff Snyder was arrested and taken
10 inside the precinct, ten uniformed officers employed by Defendant City appeared, two emerging
11 from a police vehicle and eight from the precinct, to arrest Plaintiff de Castro on suspicion of
12 having written one or more of the political messages identified above in paragraphs 4.8 and 4.9.
13 Plaintiff de Castro did not consent to, but did not resist, the arrest.

14 4.13 Two of the officers, one from the vehicle and one from the precinct, physically
15 seized Plaintiff de Castro. Again, public records indicating Defendant Patton’s role as the
16 “arresting officer” appears to be inconsistent with video footage of the officers who seized
17 Plaintiff de Castro. Rather, Defendant Nelson’s sworn narrative, in which he admits to arresting
18 Plaintiff de Castro, appears to be consistent with the video. The name of the second officer who
19 seized Plaintiff de Castro is presently unknown to Plaintiffs. Video footage shows this
20 unidentified officer, John Doe #3, to be male, white, light haired, and wearing a yellow facial
21 covering.

22 4.14 Approximately eight minutes after Plaintiff de Castro was arrested and taken
23 inside the precinct, approximately eleven officers employed by Defendant City appeared, three
24 emerging from the precinct building and approximately eight from four police vehicles, to arrest
25 Plaintiff Moya-Delgado on suspicion of writing one or more of the political messages identified
26 above in paragraphs 4.8 and 4.9 as well as part of a song lyric (“♪ *Always some pig there to beat*
27 *me*” in the style of Naked Eye’s “*Always something there to remind me*”) on the brick wall of the

1 precinct building in children’s sidewalk chalk. The writing of the lyric, like the other political
2 messages, was inherently temporary, could have been wiped off with little effort, would wash
3 away in the rain, and caused no damage to the function or aesthetic value of the precinct.

4 Plaintiff Moya-Delgado did not consent to, but did not resist, the arrest.

5 4.15 All three of the officers who emerged from the precinct physically seized Plaintiff
6 Moya-Delgado. Yet again, arrest paperwork indicating Defendant Patton’s role as Plaintiff
7 Moya-Delgado’s “arresting officer” appears to be inconsistent with video footage of the arrest.
8 The identities of the three seizing officers, which are not indicated in public records, are
9 presently unknown to Plaintiffs. Video footage shows one of the first of these three unidentified
10 officers to likely be John Doe #1; the second, John Doe #4, to be male, white, dark-haired, with a
11 dark gray facial covering; and the third, Jane Doe #1, to be female, a person of color, dark-
12 haired, and wearing a black facial covering.

13 4.16 As a direct and proximate result of the foregoing events, each Plaintiff was seized,
14 handcuffed, escorted inside the East Precinct, placed in cold, disorienting, and uncomfortable
15 holding cells, and detained for substantial periods of time during which they experienced various
16 indignities, physical pain and suffering, and loss of the freedoms of expression, movement, and
17 association.

18 4.17 On March 4, 2020, the King County Executive announced that “Correctional
19 facilities” will restrict the type of bookings they will accept. Jails will not accept people brought
20 in for misdemeanor charges, except for misdemeanor assaults, violations of no contact or
21 protection orders, DUIs, sex crimes or other charges which present a serious public safety
22 concern.” This policy is referred to below as “the County’s Covid-19 booking policy”.

23 4.18 On January 2, 2021, the offense for which Plaintiffs were arrested was not on the
24 list of charges which present a “serious public safety concern” under the County’s Covid-19
25 booking policy.

1 4.19 The County’s Covid-19 booking policy was subject to exceptions, referred to as
2 an “override,” at the request of law enforcement and local government partners, including SPD
3 and Defendant City.

4 4.20 Prior to Plaintiffs’ arrest, at least one person employed by SPD at the rank of
5 “assistant chief or higher” used their official position to “override” the County’s Covid-19
6 booking policy so that it did not apply to people arrested during political protests.

7 4.21 Prior to Plaintiffs’ arrest, at least one person employed by Defendant City in an
8 “executive leadership” position in the Mayor’s Office used their official position to “override”
9 the County’s Covid-19 booking policy so that it did not apply to people arrested during political
10 protests.

11 4.22 According to independent inquiry and information, Mr. John Diaz (former
12 director of the King County Department of Adult and Juvenile Detention) referred to the
13 “executive leadership” official referenced in paragraph 4.21 using she/her/hers. She is sued
14 herein as Jane Doe #2.

15 4.23 “Override” of the County’s Covid-19 booking policy by the SPD “assistant chief
16 or higher” and Jane Doe #2 discriminated against detainees based upon political participation
17 and viewpoint by causing those arrested for non-violent offenses in the context of political
18 protests to be booked into jail while those arrested for non-violent offenses in non-political
19 contexts were not booked.

20 4.24 As a direct, proximate, and foreseeable result of “overriding” the County’s Covid-
21 19 booking policy by the SPD “assistant chief or higher” and by Defendant Jane Doe #2,
22 Plaintiffs were booked into the King County Jail on January 2, 2021 based upon political
23 participation and viewpoint.

24 4.25 Booking into the Jail extended the duration, and enhanced the severity, of
25 Plaintiffs’ seizures: all four Plaintiffs were involuntarily moved from the East Precinct to the
26 King County Jail where they were searched, stripped of civilian clothing, dressed in jail garb,
27 photographed, fingerprinted, moved from one cold and unsanitary cell to the next, and otherwise

1 subjected to various indignities, physical pain and suffering, and loss of the freedoms of
2 expression, movement, and association.

3 4.26 Each Plaintiff was released from the Jail at a different time of day on January 2,
4 2021.

5 4.27 According to their sworn statements, Defendants Jordon, Nelson, and Patton each
6 independently reviewed and relied upon the elements of Seattle Municipal Code 12A.08.020—
7 “Property Destruction” to establish probable cause for arresting Plaintiffs.

8 4.28 SMC 12A.08.020 states: “A person is guilty of property destruction if he or she . .
9 . (2) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private
10 building or other structure or any real or personal property owned by any other person.”

11 4.29 SMC 12A.08.020 differs from a related Washington State statute, RCW
12 9A.48.090. Although both laws criminalize “writ[ing], paint[ing], or draw[ing] any inscription,
13 figure or mark of any type on any public or private building or other structure or any real or
14 personal property owned by any other person,” the state statute excludes writing, painting, and
15 drawing that occurs with the express permission of the owner. In contrast, the municipal
16 ordinance does not require any evidence regarding the property owner’s permission, which is the
17 writer, painter, or drawer’s burden to prove during prosecution as an “affirmative defense.”
18 Thus, under the plain language of the ordinance, Defendants could arrest and prosecute the
19 famous Seattle muralist Ryan “henry” Ward under SMC 12A.08.020 for painting a mural with
20 not only the owner’s express permission, but paid commission.

21 4.30. SMC 12A.08.020 also permits Defendants to arrest and prosecute anyone who
22 had a “reasonable belief” that they had the lawful right to write, paint, or draw on someone else’s
23 property. Like express permission, the issue of “reasonable belief” is relegated to an “affirmative
24 defense.” Thus, the plain language of the ordinance would allow Defendants to arrest and
25 prosecute children for chalking a rainbow on the sidewalk in front of their home, protesters for
26 chalking political slogans on a temporary concrete wall built over the public sidewalk,
27 employees for using their employer’s word processing software, an attorney or law clerk for

1 writing a note on a legal pad belonging to co-counsel or the court, or anyone who reasonably and
2 innocently believes that their writing is impliedly authorized or protected by any legal right,
3 including the First Amendment.

4 4.31 When they asserted probable cause to arrest Plaintiffs, Defendants Jordon,
5 Nelson, and Patton made no mention of having reviewed or considered the affirmative defenses
6 of express permission or reasonable belief.

7 4.32 By its plain language, SMC 12A.08.020 sweeps within its ambit an overwhelming
8 degree of constitutionally protected expressions and activities.

9 4.33 Prosecutors did not charge Plaintiffs within the two-year statute of limitations for
10 SMC 12A.08.020 or any related offense presumably because Plaintiffs' only true crime was
11 criticizing the Defendants in the public forum.

12 4.34 The Defendant City enforced SMC 12A.08.020 against Plaintiffs selectively and
13 because of retaliatory animus.

14 4.35 The Defendant City does not apply SMC 12A.08.020 to temporary chalk or
15 charcoal writing that is supportive of the government or police. But for the content and viewpoint
16 Plaintiffs expressed on January 1, 2021, they would not have been arrested.

17 4.36 The Defendant City's long-established policy is to treat the use of sidewalk chalk
18 as non-criminal.

19 4.37 On March 20, 2015, the SPD's official Twitter account posted the following
20 response to a query from a member of the public regarding legality of politically neutral
21 messages written in chalk:

22
23 //

24
25 //

26
27 //



Source: <https://twitter.com/SeattlePD/status/578967302231609344>

1 4.38 Consistent with the announcement on Twitter, images posted to the Seattle Police
2 Foundation Facebook page suggest that Defendant City took no enforcement action against pro-
3 police messages such as “WE ♥ SPD” chalked in public parks on July 8 and 15, 2017:



15 Source: <https://www.facebook.com/seattlepolicefoundation/photos/10155261025517419>



27 Source: <https://www.facebook.com/seattlepolicefoundation/photos/10155286250797419>

1 4.39 Likewise, the Defendant City’s police took no enforcement action against
2 political messages such as “LIBERTY IS ESSENTIAL” and pro-police messages such as
3 “DEFEND SPD” chalked during a “Back the Blue” rally at City Hall on July 15, 2020:



25 Source: <https://komonews.com/news/local/supporters-rally-outside-city-hall-to-defend-spd>
26 (red circle added to video still-frame to highlight individual chalking in front of SPD officers)

1 4.40 However, when members of the public chalk criticism of the government or
2 police, the Defendant City reacts very differently, as demonstrated by the arrest and booking of
3 Plaintiffs on January 1, 2021.

4 4.41 Expressing the same discriminatory animus on March 3, 2021, SPD’s Lt. John
5 Brooks cited “SMC Property Destruction” while threatening “enforcement action” against
6 members of the public for chalking the public sidewalk outside of SPD’s West Precinct. This still
7 frame image from an audio-video recording of Lt. Brooks’ threat shows sidewalk chalk visible in
8 foreground criticizing SPD for the murder of Black and Brown Seattle residents:



1 **Count Two: Fourteenth Amendment Violations under 42 U.S.C. § 1983**

2 5.5 By virtue of the foregoing, SMC 12A.08.020 is impermissibly vague on its face in
3 violation of U.S. Const., amend. XIV, such that Plaintiffs have no notice of the conduct
4 prohibited, depriving them of liberty without due process of law.

5 5.6 By virtue of the foregoing, SMC 12A.08.020 facially violates U.S. Const., amend.
6 XIV, by criminalizing entirely innocent conduct regardless of Plaintiffs' intent and regardless of
7 whether Plaintiffs reasonably believed they were expressly or impliedly authorized to make the
8 mark, figure, or inscription alleged.

9 **Count Three: Fourth Amendment Violations under 42 U.S.C. § 1983**

10 5.7 By virtue of the foregoing, Defendant City subjected each Plaintiff to
11 unreasonable search and seizure, without probable cause or other justification, in violation of
12 U.S. Const., amend. IV.

13 **Count Four: Monell Claim under 42 U.S.C. § 1983**

14 5.8 By virtue of the foregoing, the Defendant City has a pattern, practice, or policy of
15 enforcing and threatening to enforce SMC 12A.08.020 in retaliation for protected speech,
16 discriminating against speech on the basis of content and viewpoint, and denying Plaintiffs and
17 similarly situated persons of liberty without due process of law. The Defendant City's policies
18 and practices thereby violate Plaintiffs' First, Fourth, and Fourteenth Amendment rights in
19 violation of 42 U.S.C. § 1983.

20 **VI. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment and other
22 relief against Defendants as follows:

23 6.1 All damages authorized by law, in amounts to be determined at trial;

24 6.2 A declaration that SMC 12A.08.020 violates the First and Fourteenth
25 Amendments on its face;

26 6.3 A declaration that SMC 12A.08.020 violates the First and Fourteenth
27 Amendments as applied;

1 6.4 An injunction prohibiting Defendants from enforcing 12A.08.020;

2 6.5 Reasonable attorney fees and costs as provided by law, including under 42 U.S.C.
3 § 1988;

4 6.6 A jury trial on all claims so triable; and

5 6.7 Pre- and post-judgment interest on any amounts recovered, to the extent
6 authorized by law.

7 DATED this 4th day of January, 2023.

8
9 By: MacDONALD HOAGUE & BAYLESS
10 705 Second Avenue, Suite 1500
11 Seattle, Washington 98104
12 Tel 206.622.1604 Fax 206.343.3961

9 By: THE LAW OFFICE OF NEIL FOX
10 2125 Western Ave Ste 330
11 Seattle, WA 98121-3573
12 Tel 206.728.5440 Fax 866.422.0542

11 s/Braden Pence
12 Braden Pence, WSBA #43495
13 Email: bradenp@mhb.com

11 s/Neil Fox
12 Neil Fox, WSBA #15277
13 Email: nf@neilfoxlaw.com

14 s/Nathaniel Flack
15 Nathaniel Flack, WSBA #58582
16 Email: nathanielf@mhb.com

17 Attorneys for Plaintiff
18
19
20
21
22
23
24
25
26
27