

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
(Central Division)

Scott Wayne Roe,
Plaintiff/Petitioner

vs.

Officer Mark L. Milligan, and Sgt. Chris
Logan, of the Ottumwa Police Department, in
their personal and official capacities,
Defendants and Respondents

Civil Action,
File Number _____

and vs.

The Ottumwa Police Department and the
Iowa District Court in and for Wapello
County, in their official capacities
Respondents

} **COMPLAINT**

COMES NOW, the Plaintiff, SCOTT WAYNE ROE and for his
Complaint against the above-named Defendants states:

I. NATURE OF PROCEEDING

This is a civil rights action brought under 42 U.S.C. 1983, seeking
equitable relief and damages. The Plaintiff is a United States citizen who,
without due process, has been and continues to be prevented by the
defendants and respondents from exercising his First Amendment right to

engage in protests, promotions and other forms of protected speech that utilize any flag, standard, color, ensign, shield, or other insignia of the United States, or the State of Iowa. In particular, the Plaintiff is being prosecuted in bad faith for an asserted violation of Iowa Code Chapter 718A and reasonably fears future prosecution under that statute unless the statute is declared facially unconstitutional and the Defendants and Respondents are enjoined from any further attempts to enforce its provisions.

Plaintiff brings this action as a facial challenge and further asserts overbreadth standing to challenge the statute on behalf of himself and the general public whose First Amendment rights are constricted by a statute that “reaches a substantial amount of constitutionally protected conduct.”¹ Iowa’s “flag or insignia desecration” statute, first enacted in 1900, should not be left to chill First Amendment rights while its constitutional parameters are determined by many more decades of piecemeal litigation. *Cf.*, Dombrowski v. Pfister, 380 U.S. 479, *491, 85 S. Ct. 1116, 14 L. Ed. 2d 22, *31 (1965) {“this cannot be satisfactorily done through a series of criminal prosecutions, dealing as they inevitably must with only a narrow portion of the prohibition at any one time, and not contributing materially to articulation of the statutory standard.”}

¹ Houston v. Hill, 482 U.S. 451, *458, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987)

For relief against the “Respondents”, Petitioner and Plaintiff, Scott Roe seeks a declaration that Iowa Code Section 718A.1 creating the crime of desecration of a flag or insignia is facially invalid for reasons of its overly broad restriction of speech that is protected under the First Amendment. The Plaintiff further seeks an injunction prohibiting the Respondents from enforcing the flag or insignia desecration statute against him for any use of flags or insignia that might be deemed expressive in any way and an injunction suspending all enforcement proceedings now pending against him under the challenged statute. Plaintiff Scott Roe seeks nominal and punitive damages against Officer Milligan and Sgt. Logan. The Plaintiff also seeks an award of reasonable attorneys fees, and the costs of this action.

II. JURISDICTION AND VENUE

Jurisdiction of this matter is predicated on 28 U.S.C, §1331 and §1343, which provide original jurisdiction to federal district courts in civil actions arising under the Constitution and civil rights statutes of the United States. Supplemental jurisdiction over any state law claims is obtained through 28 U.S.C. §1367 which requires federal district courts to exercise jurisdiction over claims that “...are so related to claims in the action that they form part of the same case or controversy” This Court has authority pursuant to 28 U.S.C. §2201 to provide declaratory relief as to matters within its jurisdiction.

III. PARTIES AND STANDING

1. Plaintiff Scott Wayne Roe is a United States citizen who maintains a personal residence located within the City of Ottumwa, Iowa.

2. Defendants Milligan and Logan are officers employed by the Ottumwa Police Department and are responsible for the unconstitutional harrassment and citation of the Plaintiff for an alleged violation of Iowa Code § 718A.1.

3. The Ottumwa Police Department is the primary law enforcement agency for Ottumwa with responsibility for enforcing Iowa Code Chapter 718A (the flag or insignia desecration statute). Pursuant to Iowa Code Section 718A.6 its chief of police can be removed from his post for failure to enforce the Chapter.

4. The Iowa District Court in and for Wapello County Iowa is a duly constituted court for the state of Iowa and is named solely for the purpose of enjoining the bad faith prosecution currently pending before it.

5. A genuine case or controversy exists because the Defendants have charged the Plaintiff Scott Roe for a violation of Iowa Code Chapter 718A despite being informed and on notice that their actions were unconstitutional. Plaintiff has been subjected to a direct and ongoing prohibition of constitutionally protected speech and fears additional prosecution.

IV. FACTS & SPECIFICATIONS

6. The Plaintiff, Scott Roe, has a band with the name "Corruption of Blood" which is a phrase taken from the U.S. Constitution referring to the English and Colonial practice of terminating rights of inheritance flowing from a person guilty of treason.

7. The Plaintiff owns and uses expressively in the band's performances a U.S. flag with the phrase "Corruption of Blood" appearing in block letters accross its front so that the letters read correctly from right to left when the flag is placed in the inverted position signifying distress" (See attached picture, "Exhibit A.")

8. The plaintiff's display of the flag in its upside down position is—and is intended to be—expressive.

9. On June 3, 2006, the Plaintiff was practicing with his band at his personal residence when he received a visit from the Ottumwa Police Department informing him that he was in violation of a recently adopted noise ordinance, and he had to cancel the practice.

10. On June 4, 2006, the Plaintiff staged a protest on his front lawn to show his "dislike for the way the Ottumwa City Council is passing ordinances at will to create a new image of the city in order to attract a casino, and the way the Ottumwa Police Dept. enforces laws."

11. The Plaintiffs protest included the display of his flag in an inverted position with a lifesize cardboard cut out of a police officer standing below it.

12. Officer Milligan of the Ottumwa police Department arrived on the scene and after about ten minutes of parking in front of the Plaintiff's house, Officer Milligan drove his vehicle up onto the boulevard strip in front of the Plaintiff's yard despite the availability of convenient less conspicuous parking.

13. Officer Milligan ascertained the Plaintiff's identity and returned to his vehicle where he remained for another ten minutes.

14. In the meantime, Sgt. Logan arrived in a squad car and also pulled his vehicle onto the boulevard strip facing Plaintiffs' front yard

15. The commotion caused by the officers' presence which resembled a drug bust subjected the plaintiff to the attention and condemnation of his neighbors.

16. The actions of Officer Milligan and Sgt. Logan in driving their squad cars onto the boulevard strip adjoining Plaintiff's property were undertaken with the intent or purpose of unnecessarily intimidating and publicly embarrassing the Plaintiff in an attempt to chill the Plaintiff's exercise of First Amendment rights.

17. After some conversations between the plaintiff and the officers, it became apparent that they were responding to a neighbor's complaint about the Plaintiff's display of the U.S. Flag.

18. The plaintiff informed the officers that he was exercising his First Amendment rights and that his expressive display was not a crime.

19. The officers then informed the Plaintiff that they had to get in touch with someone to find out what to charge him with.

20. After 3 or 4 calls to their legal advisors or lawyers, the officers informed the plaintiff that he would be charged with a violation of Iowa Code Section 718A.1.

21. The Plaintiff attempted to persuade the officers that the statute had been held to be unconstitutional and that his display was lawful.

22. The officers asked the Plaintiff to take down the flag, and informed him that if he did not, his flag would be seized and that he would be arrested.

23. The officers issued a citation to the Plaintiff charging him with a violation of Iowa Code Section 718A.1.

24. At his arraignment before a magistrate on June 6, 2006, the Plaintiff informed the magistrate that he had a constitutional right to fly his flag as he did and that the desecration statute was unconstitutional.

25. The magistrate made a legal inquiry into the constitutionality of the desecration statute by consulting a law book behind his bench and then informed the Plaintiff that the statute appeared to still be in effect.

26. The plaintiff is an individual who believes in the right of protest and intends to continue using his flag in protest and as part of his band's image and message.

27. The plaintiff intends and would like to be able to use other government insignia as well when it meets his expressive purposes.

28. The statute in issue, Iowa Code Section 718A.1 and succeeding sections are overly broad and restrict nearly all speech or expression that might be attempted using Iowa or United States flags, seals, colors, shields, standards, ensigns, insignia or any replica thereof.

29. Iowa Code Chapter 718A does not serve a compelling governmental interest.

30. If the officers, their legal advisors, or the magistrate had each made a good faith inquiry into the constitutionality of the statute, at least one of them would have discovered that the Iowa Statute cannot be legally applied to flying a flag in inverted position for expressive purposes due to a pre-existing Iowa Supreme Court decision, State v. Kool, 212 N.W. 2d 518 (1973).

31. Whether or not the officers and their legal advisors were in fact aware of the *Kool* decision they were at the time of their actions on notice of that decision and should have known that their actions in charging the Plaintiff and threatening his arrest were unconstitutional and unlawful.

32. The actions of the officers and any superiors who directed their conduct were undertaken in actual or reckless disregard of the Plaintiff's constitutional rights to freedom of expression as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

32. The initial arrest and the continued prosecution of the Plaintiff has been in bad faith.

33. Iowa Code Section 718A.2 allows any any aggrieved citizen (such as the neighbor who complained in this case) to enforce the statute by bringing an action against the Plaintiff.

34. Iowa Code Section 718A.6 threatens law enforcement officials with removal from office if they fail to enforce the provisions of Iowa Code Chapter 718A.

35. Given the bad faith and reckless disregard for constitutional rights shown by the Defendants and Respondents initiating and maintaining the proceedings in Wapello County District Court, and the statutory directives for strict enforcement the Plaintiff remains in reasonable apprehension of future

enforcement efforts and is being chilled from the exercise of further speech that should be protected.

36. The statute under which the Plaintiff has been charged is so overly broad that it reaches a substantial range of protected expression.

37. The Plaintiff asserts overbreadth standing to challenge the statute in all of its scope of operations.

38. Iowa Code Chapter 718A was, in fact, adopted with the actual purpose and motive of curbing symbolic speech which is now understood to be constitutionally protected.

39. Nor can Iowa Code Chapter 718A survive any form of heightened judicial scrutiny as to its constitutionality.

40. The behaviors and actions of Officer Milligan and Sgt. Logan were conducted in bad faith and in actual or reckless disregard of the Plaintiff's rights under the First, Fourth and Fourteenth Amendments to the United State's Constitution and should be subjected to punitive damages.

41. The actions of the Respondents and Defendants are assertions of official governmental power or authority undertaken under color of statute, ordinance, regulation, customs, or usages within the meaning of 42 U.S.C., §1983

V. CLAIMS ASSERTED

A. Damage Claims

Asserted against Officer Mark L. Milligan, and Sgt. Chris Logan, and One or More Yet to be Identified Officials [*"Defendants"*]

The "Defendants" have violated the Plaintiffs rights of free speech as guaranteed by the First and Fourteenth amendments to the United States Constitution and Article I, Section 7 of the Iowa Constitution and should be held liable for both nominal and punitive damages.

B. Equitable Claims

Asserted against all parties [*"Respondents"*]

Iowa Code Chapter 718A is overly broad in its operation and prohibits a substantial range of constitutionally protected speech. Moreover the statute directly and intentionally proscribes constitutionally protected speech. Nor can the statute survive strict scrutiny when analyzed as a possibly valid regulation. The aggressive enforcement language of the statute taken together with the hostility of the officials in this case toward Plaintiff's

speech and the actual fact of prosecution require that injunctive relief be entered lest the plaintiff and others continue to be chilled and punished for constitutionally protected expression. Chapter 718A violates the guarantee of freedom of expression under the First and Fourteenth amendments to the United States Constitution and Article I, Section 7 of the Iowa Constitution. Iowa Code Chapter should be declared unconstitutional on its face and the "Respondents" should be enjoined from all further enforcement.

IV. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays the Court for the following:

A. Plaintiff requests an declaratory judgment that Iowa's flag or insignia desecration statute, Iowa Code Chapter 718A is substantially overbroad in its prohibition of protected speech, fails strict scrutiny, cannot be salvaged and for those reasons must

B. Plaintiff requests both preliminary and permanent injunctive relief from the enforcement activities which Defendants have taken including a injunction restraining pending and future prosecutions of the Plaintiff under Iowa Code Chapter 718A.

C. Plaintiff requests an award of nominal, and punitive damages from the Defendants in compensation for the deprivation of his constitutional rights as set forth herein.

D. Plaintiff requests the Court to enter judgment against the Respondents and Defendants with the exception of the Iowa District Court awarding the Plaintiff reasonable attorneys fees, litigation expenses, and the costs of this action pursuant to 42 U.S.C, § 1988.

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Respectfully Submitted,
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