UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Jacksonville Division

THOMAS JAMES COVENANT, an individual, and JEFFREY MARCUS GRAY, an individual, Plaintiffs, v. MARK HARRISON MAHON, in his official capacity as Chief Judge of the Fourth Judicial Circuit of Florida, and MIKE WILLIAMS, in his official capacity as the Sheriff of Jacksonville, Duval County, Florida, Defendants.	Case No. 3:15-cv-_____ INJUNCTIVE RELIEF SOUGHT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW the Plaintiffs, THOMAS JAMES COVENANT ("Mr. Covenant") and JEFFREY MARCUS GRAY ("Mr. Gray") (collectively, the "Plaintiffs"), by and through their undersigned Counsel, and sue MARK HARRISON MAHON ("Chief Judge Mahon"), in his official capacity as the Chief Judge[1] of the Fourth Judicial Circuit of Florida, and MIKE WILLIAMS ("Sheriff Williams"), in his official capacity as the Sheriff of Jacksonville, Duval County, Florida, and in support thereof, Plaintiffs allege the following:

[1] *See* FLA. STAT. § 43.26.

INTRODUCTION, JURISDICTION, VENUE, AND PARTIES

1. This is an action for prospective declaratory and injunctive relief, arising from the issuance and enforcement of *Administrative Order No. 2015-3* ("AO 2015-3"), a true and accurate copy of which is attached hereto as Exhibit A.

2. This Court has subject matter jurisdiction over this matter, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), 28 U.S.C. § 1367, and 42 U.S.C. §§ 1983, 1988.

3. Venue in this judicial district and division is proper, pursuant to 28 U.S.C. § 1391(b) and M.D. Fla. Loc. R. 1.02. Plaintiffs are residents of this judicial district and division. Furthermore, all events giving rise to Plaintiffs' claims occurred in the City of Jacksonville, Florida, in this judicial district and division.

4. Mr. Covenant is a resident and citizen of Jacksonville, Duval County, Florida.

5. Mr. Gray is a resident and citizen of St. Augustine, St. Johns County, Florida.

6. Chief Judge Mahon is the Chief Judge of the Fourth Judicial Circuit, and has "administrative supervision over all the trial courts within the judicial circuit and over the judges and other officers of such courts". FLA. STAT. §43.26(1). Furthermore, Chief Judge Mahon is vested with the authority "[t]o do

everything necessary to promote the prompt and efficient administration of justice in the courts over which he or she is chief judge." FLA. STAT. §(2)(e). At all times material hereto, Chief Judge Mahon acted under color of state law. Plaintiffs sue Chief Judge Mahon in his official capacity for prospective declaratory relief, injunctive relief, and attorneys' fees and costs.

7. Sheriff Williams is the Sheriff of Jacksonville, Duval County, Florida. He assumed office on July 1, 2015. As Sheriff, he exercises overall responsibility for the policies, training, and practices of all law enforcement officers employed by the Jacksonville Sheriff's Office (the "JSO"). At all times material hereto, Sheriff Williams acted under color of state law, in his official capacity as the Sheriff. Plaintiffs sue Sheriff Williams in his official capacity for prospective declaratory relief, injunctive relief, and attorneys' fees and costs.

STATEMENT OF FACTS

A. AO 2015-3

8. On July 1, 2015, Chief Judge Mahon issued AO 2015-3.

9. In relevant part, AO 2015-3 criminalizes "[d]emonstrations or dissemination of materials that degrade or call into question the integrity of the Court or any of its judges (e.g., claiming the Courts, Court personnel or judges are 'corrupt', biased, dishonest, partial, or prejudiced) . . . on the Duval County Courthouse grounds." AO 2015-3, at p. 6.

10. In relevant part, AO 2015-3 criminalizes "[d]emonstrations that unreasonably disrupt, disturb, interrupt, or interfere with the impartial and orderly conduct of the judiciary, or that of JSO or other security officers . . . on the Duval County Courthouse grounds." *Id.*

11. In relevant part, AO 2015-3 criminalizes "[t]he videotaping of secure locations on the Duval County Courthouse grounds, such as the judges' secure parking garages . . . the State Attorney's Office garage . . . and the Sally Port, and all security features of the Duval County Courthouse . . ." *Id.*

12. AO 2015-3 specifically provides that "[a]ny person engaging in the type of expressive conduct as indicated in this Order may be found in criminal contempt of Court." *Id.* at 7.

13. AO 2015-3 states that it "shall not, in any way, be construed as superseding or contradicting any of the provisions of the Second Amended Administrative Order No. 2013-17, establishing the policies and location of peaceful demonstrators, which has been previously entered on November 20, 2014." A copy of the Second Amended Administrative Order No. 2013-17 ("SAAO 2013-17") is attached hereto as Exhibit B.

14. SAAO 2013-17 and AO 2015-3 are irreconcilable, insofar as SAAO 2013-17 is a content-neutral regulation of the time, place, and manner of speech on the grounds of the Duval County Courthouse, whereas AO 2015-3 is a content-

based, viewpoint-based prohibition of speech and other admittedly "expressive conduct".

B. JSO ENFORCEMENT OF AO 2015-3

15. AO 2015-3 directs the JSO to provide a copy of AO 2015-3 to any individual who violates AO 2015-3. AO 2015-3, at p. 7.

16. AO 2015-3 further provides that "[i]f an individual is observed to engage in conduct that is in violation of this Order after having been provided notice as set forth herein, the Jacksonville Sheriff's Office is hereby DIRECTED to arrest and charge the offending individual with indirect criminal contempt of Court (and any other charges deemed appropriate) and transport such person to the Duval County Jail for identification and processing." *Id.* (emphasis in original).

C. PLAINTIFFS' EXPRESSIVE CONDUCT AND JOURNALISM

17. Plaintiffs are journalists who are affiliated with Photography Is Not A Crime ("PINAC"), a media organization that focuses its newsgathering and reporting on police-citizen interactions.

18. In recent months, Plaintiffs and other PINAC-affiliated journalists have been protesting, demonstrating, and otherwise engaging in core political speech and other expressive conduct on and in the vicinity of the Duval County Courthouse grounds. This expressive conduct has, at times, consisted of criticisms of judges, police officers, and other public officials.

19. Plaintiffs and other PINAC-affiliated journalists have also been engaging in their usual video-journalism on and in the vicinity of the Duval County Courthouse grounds.

20. On July 2, 2015, Plaintiffs were standing on the sidewalk on the west side of Broad Street, across the street from the Duval County Courthouse, and were engaging in video-journalism. Thereupon, a JSO officer approached Plaintiffs, provided them with a copy of AO 2015-3, and ordered them to cease and desist, and to "leave the area". The JSO officer explained that if Plaintiffs did not cease and desist, consistent with AO 2015-3, Plaintiffs would be arrested for contempt of court. Plaintiffs' interaction with this JSO officer was captured on video and can be viewed at the following internet link: https://www.youtube.com/watch?v=MEvMUsWmHdw&feature=youtu.be

21. Plaintiffs have a genuine and immediate desire and intent to resume their video-journalism and political speech – including speech that is explicitly prohibited by AO 2015-3 – on and in the vicinity of the Duval County Courthouse grounds. However, they fear that if they do so, they will be arrested for contempt of court, pursuant to AO 2015-3.

22. Plaintiffs have engaged the undersigned Counsel and agreed to pay reasonable attorneys fees and costs.

COUNT I – FIRST AMENDMENT VIOLATION

23. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 22 as though fully set forth herein.

24. This is an action pursuant to 42 U.S.C. §§ 1983 and 1988, and the First and Fourteenth Amendments for declaratory and injunctive relief.

25. AO 2015-3 is unconstitutional on its face, because it impermissibly infringes on Plaintiffs' right to free speech, protected by the First Amendment, which is incorporated against the States by virtue of the Fourteenth Amendment.

26. AO 2015-3 orders Sheriff Williams to arrest those who are lawfully exercising their First Amendment rights, and criminalizes otherwise legally-protected, First Amendment, expressive conduct.

27. AO 2015-3 is fatally overbroad, and there is no compelling governmental interest that is served by it.

28. Alternatively, AO 2015-3 is fatally overbroad, because it is not narrowly tailored to serve any governmental interest that it may serve.

29. AO 2015-3 is also an unconstitutional prior restraint of speech and other expressive conduct.

30. AO 2015-3 censors core political speech.

31. AO 2015-3 abrogates Plaintiffs' First Amendment right to photograph and video police officers and other public officials and public buildings.

WHEREFORE, Plaintiffs respectfully request the following relief:

(a) a declaration that AO 2015-3 is facially unconstitutional.

(b) a temporary restraining order, prohibiting any enforcement of AO 2015-3.

(c) preliminary and permanent injunctions, prohibiting any enforcement of AO 2015-3.

(d) an award of reasonable costs and attorneys fees in favor of Plaintiffs, payable jointly and severally by the Defendants, pursuant to 42 U.S.C. § 1988, and

(e) such other and further relief as this Honorable Court deems just and appropriate.

COUNT II – FOURTEENTH AMENDMENT VIOLATION

32. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 22 as though fully set forth herein.

33. This is an action pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourteenth Amendment for declaratory and injunctive relief.

34. AO 2015-3 is unconstitutionally vague on its face, because it is not phrased in terms sufficiently definite so that men of common intelligence will not have to guess at its meaning and application.

35. AO 2015-3 is void for vagueness, because it is ambiguous, fails to give adequate notice of what is criminalized, and encourages arbitrary and discriminatory law enforcement practices.

36. For example, AO 2015-3 fails to define the following material terms:

a. "degrade"

b. "call into question"

c. "disrupt"

d. "disturb"

e. "interrupt"

f. "interfere"

g. "impartial and orderly conduct of the judiciary"

h. "secure locations"

i. "credentialed media representatives"

See AO 2015-3, at p. 6.

37. Therefore, AO 2015-3 violates the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully request the following relief:

(a) a declaration that AO 2015-3 is facially unconstitutional.

(b) a temporary restraining order, prohibiting any enforcement of AO 2015-3.

(c) preliminary and permanent injunctions, prohibiting any enforcement of AO 2015-3.

(d) an award of reasonable costs and attorneys fees in favor of Plaintiffs, payable jointly and severally by the Defendants, pursuant to 42 U.S.C. § 1988, and

(e) such other and further relief as this Honorable Court deems just and appropriate.

COUNT III – VIOLATION OF FLORIDA CONSTITUTION SEPARATION OF POWERS DOCTRINE

38. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 22 as though fully set forth herein.

39. In the State of Florida, "[o]ur theory of government is that of separation of powers. The Legislature and not the court is responsible for legislating . . . Judges of Courts cannot do so because [they] were not elected to the Florida Legislature." *State, Dept. of Juvenile Justice v. Soud*, 685 So.2d 1376, 1379 (Fla. 1st DCA 1997).

40. This Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. §1367, article V, section 5, of the Florida Constitution, and FLA. STAT. §26.012.

41. By entering AO 2015-3, Chief Judge Mahon exceeded his jurisdiction and authority, and in doing so, violated the Florida Constitution's Separation of Powers Doctrine.

42. The subject matter of AO 2015-3 is beyond that which is the proper concern of administrative orders, as contemplated by the Florida Rules of Judicial Administration.[2]

WHEREFORE, Plaintiffs respectfully request the following relief:

(a) a declaration that AO 2015-3 violates the Florida Constitution's Separation of Powers Doctrine.

(b) a permanent injunction, prohibiting any enforcement of AO 2015-3.

(c) an award of reasonable costs and attorneys fees in favor of Plaintiffs, payable jointly and severally by the Defendants, and

(d) such other and further relief as this Honorable Court deems just and appropriate.

Respectfully submitted July 7, 2015, by: **The Bonderud Law Firm, P.A.**

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[2] *See* FLA. R. JUD. ADMIN. 2.020(c) (defining "administrative order" as "a directive necessary to administer properly the court's affairs."

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