

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

EDWARD GOODWIN and DELANIE
GOODWIN,

Plaintiffs,

v.

WALTON COUNTY, FLORIDA,

Defendant.

No. _____

**COMPLAINT FOR
VIOLATION OF FIRST
AMENDMENT FREE
SPEECH RIGHTS UNDER
42 U.S.C. § 1983**

**DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a 42 U.S.C. Section 1983 civil-rights lawsuit that seeks to vindicate the constitutional right of Edward and DeLanie Goodwin (Plaintiffs or Goodwins) to engage in free speech on their property by posting small signs viewable by people on an adjacent public beach.

2. The Goodwins' property fronts the Gulf coast of Florida in Walton County. Their property line extends seaward to the mean high water line (MHWL) and includes a dry sand beach area. That area is effectively the Goodwins' backyard, and they regularly use it for personal and family enjoyment.

3. The Goodwins' dry sand beach is immediately adjacent to the publicly-owned beach lying between the Gulf waters and MHWL. This area is subject to heavy pedestrian use and traffic at certain times. Indeed, members of the public can and do occasionally leave the public beach and enter the Goodwins' property without the Goodwins' permission. Some have used the land for destructive and objectionable activities. The County has also driven large vehicles on the Goodwins' dry beach land without permission.

4. Under state and local trespassing law and policies, the County will not enforce trespassing laws on private beaches unless the owners first survey and clearly mark out their beach property lines. To comply with this policy and to advise the public that the dry sand area in front of the Goodwin house is private, the Goodwins posted several “Private Property” signs along the surveyed boundary of their dry sand property. The Goodwins have also posted a small sign with an American flag background that says: “If the County Wants My Private Beach for Public Use, It Must Pay Me For It—U.S. Constitution.”

5. However, under a new County Ordinance, the Goodwins’ signs—and all others they may put up—are illegal because the Ordinance bans all signs on private dry sand areas adjacent to the public beach. Under the law, the Goodwins must take down all their current advisory and political signs, and are barred from erecting any signs in the future. If they keep the present signs or post more, the County has stated they will incur penalties.

6. The Goodwins would like to continue to posts signs on their dry sand property, including “No Trespassing” and “Private Property” and other types of signs, but the Ordinance forecloses this medium of speech. In so doing, the Ordinance violates the First Amendment on its face. As a result, the Goodwins are entitled to injunctive and declaratory relief against the Ordinance.

JURISDICTION AND VENUE

7. Plaintiffs bring this civil-rights lawsuit pursuant to the First Amendment to the U.S. Constitution, as incorporated against the states by the Fourteenth Amendment; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201, for injunctive and declaratory relief. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 42 U.S.C. § 1983. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff Edward Goodwin is a 75-year-old retired phone company manager. He is a part owner of the Property and the signs subject to the County Ordinance challenged in this suit.

9. Plaintiff DeLanie Goodwin is a retired banker. She is married to Edward Goodwin and is a part owner of the Property and the signs subject to the County Ordinance challenged in this suit.

10. Walton County is a political subdivision of the State of Florida. It is subject to the United States Constitution, including the First Amendment, and to suit under 42 U.S.C. § 1983.

FACTUAL ALLEGATIONS

The Goodwin Property

11. In 1971, the Goodwins purchased Gulf front, residential property (Property) in the Santa Rosa Beach area of Walton County. The Property is part of the “Santa Rosa Dunes” subdivision and has an address of 113 Fort Panic Road, Santa Rosa Beach, Florida. *See* Exhibit A (attached to the complaint and incorporated herein).

12. In 1978, the Goodwins built a 2,296 square-foot home on their land. That home remains today, and the Goodwins occupy it as their residence.

13. As with most beachfront parcels in Walton County and the rest of Florida, the Goodwins’ residential lot extends seaward toward the Gulf of Mexico to the Mean High Water Line. Indeed, under the Goodwins’ deed, plat, and the laws of Florida, the MHWL is their property boundary on the Gulf side. *See* Exhibit B (attached to the complaint and incorporated herein).

14. Tide lands lying seaward of the MHWL and adjacent to the Property are state-owned public beaches. Upland of the MHWL on the Goodwin Property, and

lying between the MHWL and line of natural vegetation and/or dunes, is a dry beach area. This dry beach is the Goodwins' private property.

15. The Goodwins hold fee simple title to the dry sand beach within their lot lines, and landward of the MHWL, with all normal incidents of such ownership, including the right to use, enjoy, and protect the land, and to exclude non-owners.

16. The Goodwins regularly use their dry beach area for recreation and family gatherings. Members of their extended family (including a daughter, grandchildren, nephews, and grandchildren) visit the Property and use the dry beach for playing and relaxation. The Goodwins themselves often use their dry beach for sunset viewing, photography, and meeting people along the shore. They also nurture fragile beach vegetation along the edge of the dry beach to protect and stabilize upland dunes.

The Goodwins Demarcate Their Property Boundaries

17. Gulf coast beaches in and around Santa Rosa Beach are popular tourist attractions. During certain times of the year (primarily Spring Break and summer), the shoreline around the Property is heavily occupied. While many members of the beachgoing public respect local residents and their property, not all do.

18. At times, there have been loud parties, excessive drinking, and littering on dry sand beach areas in Walton County.

19. Individuals have occasionally used the Goodwins' own dry beach without permission and for activities which the Goodwins do not condone. Some have set up beach tents on the Property, allowed pets to defecate on it, and refused to pick up their refuse. On occasion (typically, at least once a year), strangers have crossed the Goodwins' dry beach without permission and entered the Goodwins' home.

20. Local surfers have claimed they have a right to use the Goodwins' dry beach. When Mr. Goodwin took pictures of a surfer trespassing on the Property in 2015, he was threatened.

21. The County sometimes drives its vehicles, including trash trucks and other large vehicles, on private dry sand areas, including that owned by the Goodwins.

22. The Goodwins do not object to pedestrians occasionally crossing their sand to get to the water, provided the Goodwins retain the right to stop any objectionable activities and to use signage where necessary to make clear that they retain control over the area.

23. Therefore, to protect their land and vegetation from damage, to clarify ownership, and to foreclose claims that the area is publicly accessible, the Goodwins posted several small “Private Property” signs along their dry beach property in 2014.

24. The Goodwins erected the signs by sticking thin white PVC posts directly in the sand, and then attaching small “Private Property” signs to the posts. They linked the posts with a lightweight, white plastic chain, thus marking out their lot lines. They then put black tape around the white posts to ensure that people would see them against the white sand and not accidentally run into them. *See Exhibit C* (attached to the complaint and incorporated herein).

25. These posted “Private Property” signs are 12" x 18" in size. The signs warn that entry onto the Goodwins’ private land behind the signs is unlawful under various Florida laws. They also identify Plaintiff Edward Goodwin as the owner of the Property, and provide his post office box mailing address for contact and inquiries by mail.

The County Cites the Goodwins for Marking Their Property—But Then Loses in State Court

26. In May, 2014, a County Code Enforcement Officer cited Edward Goodwin for violating County code provisions that barred the placement of “obstructions” on the beach without a permit. The citation identified the placement of “PVC post and Chain from toe of dune south toward the waters edge” as the offending “obstruction.” The Citation levied a civil penalty of \$100.00.

27. Mr. Goodwin moved to dismiss the citation in state court, contending in part that state law allowed the posting of his private property lines.

28. Goodwin specifically claimed the posting of his property was allowed as of right under Florida Department of Environmental Protection Regulations Rule 62B-33.004(2). That Rule exempts certain activities from state coastal permitting requirements, including “[m]inor activities which do not cause an adverse impact on the coastal system and do not cause a disturbance to any significant or primary dune.” The Rule notes that such minor, exempt activities include “[m]ono-post structures . . . provided there is minimal disturbance to the beach and dune system”

29. Goodwin also relied on Florida statutes that generally require private property owners to post and mark off their land boundaries before they can invoke criminal trespass laws to protect the land.

30. In October, 2014, the state court granted Goodwin’s motion and dismissed the County’s “obstruction” citation arising from the posting of his dry beach area.

31. The Goodwins kept their signs and posts on their private dry beach area as they had erected them.

The Sheriff Requires Posting of Private Beach Boundaries, the County Researches Suits to Make Private Beaches Public, and More Signs Go Up

32. In May, 2015, the Walton County Sheriff’s Office issued Standard Operating Procedure #15-004 (SOP) to address enforcement of trespassing laws on private dry sand beaches. The SOP explained that enforcement would not occur unless beachfront property owners first mark “on the ground” their boundaries, including the mean high water line that forms the boundary between private and public beach property.

33. The SOP is understood in light of Florida trespassing statutes that generally require land to be “posted” for enforcement of anti-trespassing laws. The

relevant state statutes define “posted land” as land on which “no trespassing” signs are placed “not more than 500 feet apart along, and at each corner of, the boundaries of the land” Fla. Stat. § 810.011.

34. During this period, a controversy grew over the status of private dry beaches in Walton County. Some County officials and members of the public suggested that dry beaches, although privately owned, might be subject to public easements due to alleged public “customary” use.

35. More beachfront owners in Walton County then marked out the land or put small signs on their dry sand property—presumably to deter public use and potential public customary use claims, and to comply with the Sheriff’s SOP.

36. In April 2016, or thereabouts, the County contracted with private attorneys to research the feasibility of bringing quiet title actions to establish public access to private dry sand areas under customary law or other common law easement doctrines. One of the elements for proving a customary right on private land is factual proof that the asserted “customary” public use has *actually occurred* on the claimed land since “time immemorial.”

The County Bans Signs, Including Those That Protect Property and Inhibit Potential Customary Public Use Claims

37. On June 14, 2016, the County added a new ordinance—the law at issue here—to its existing Beach Activities Code. In relevant part, the new Ordinance bans the placement of signs on the beach. Codified as Section 22-55 of the Walton County Code of Ordinances, the Ordinance specifically states:

It shall be unlawful for any person to place, construct or maintain an obstruction on the beach. Obstructions include, but are not limited to ropes, chains, signs, or fences.

(Emphasis added.)

38. The County Code defines the “beach” subject to the Ordinance as “the soft sandy portion of land lying seaward of the seawall or the line of permanent dune vegetation.”

39. The Ordinance thus bans all signs on privately owned dry sandy beaches lying between the mean high water mark and the vegetation line. This area includes the Goodwins’ private sand beach.

40. The Ordinance makes no exceptions for small, temporary, or political signs. All signs are banned all the time.

41. The Ordinance thus prevents property owners from using signs to identify their dry beach property as “private” and/or for advising the relevant audience—people and vehicles on the adjacent public beach—that there is “No Trespassing” on such private lands.

42. The Ordinance prevents beachfront owners from using signs on their dry sand property to convey any political or personal messages, including those about County beach policies, to individuals on the public beach.

43. The sign ban potentially makes it easier for the public and government to mistake dry sand areas as public beaches, to use them, and to later claim that such areas are burdened by public easements due that actual public use.

44. No exceptions from the sign ban are available under the County Code.

45. On June 29, 2016, the County sent a letter to the Goodwins informing them of the pending enforcement of the new sign ban. Exhibit D (attached to the complaint and incorporated herein). The letter reiterates that the “beach” includes the all areas seaward of the vegetation line and then states, in pertinent part:

If as the date of this letter you have an obstruction on the beach, including but not limited to ropes, chains, signs, or fences, you are in violation of Section 22-55 of the Beach Activities Ordinance. . . .

If you are in violation of . . . 22-55 of the Beach Activities Ordinance, you have until July 15, 2016 to correct the violation by removing any obstruction that you have placed, constructed or maintained on the beach, including but not limited to ropes, chains, signs, or fences. If you do not correct this violation on or before July 15, 2016, a citation will be issued to you requiring that you pay a civil penalty of up to \$500.00 per violation.

46. Prior to the July 15, 2016 enforcement date, the Goodwins removed the plastic chainlink fencing that had previously connected the PVC posts marking out their dry sand boundary lines. They also took down several of the white PVC posts. However, they kept one “Private Property” sign attached to a white PVC post stationed on the Eastern and Western sides of their dry sand boundary.

47. The Goodwins recently added a single small sign to one of their posts. This sign has an American flag background and says: “If the County Wants My Private Beach for Public Use, It Must Pay Me For It—U.S. Constitution.” *See Exhibit E (attached to the complaint and incorporated herein).*

48. The Goodwins wish to retain all their signs, but the Ordinance demands that they come down.

49. The Goodwins desire to continue using small signs on their private dry beach property to communicate messages about the private status of their property. They also want the option to use signs on the dry beach to communicate other messages to members of the public and government officials on the adjacent public beach.

50. The County itself has posted numerous advisory signs on publicly-held strips of dry beach that serve as public beach access points from public roads and parking areas.

51. To Plaintiffs' knowledge, the County did not take down its signs by July 15, 2016, and has no plans to take them down.

DECLARATORY RELIEF ALLEGATIONS

52. Under the First Amendment to the United States Constitution, Plaintiffs have a federal right to use signs on their private property to convey messages to the government and public.

53. Defendant County has enacted, and is charged with enforcing, an Ordinance that violates the First Amendment, as enforced through 42 U.S.C. § 1983, by banning all signs on portions of private property that are visually accessible to members of the public and County officials using the shoreline.

54. There is a justiciable controversy in this case as to whether the Ordinance violates the First Amendment on its face.

55. A declaratory judgment as to whether the Ordinance violates the First Amendment will clarify the legal relations between Plaintiffs and Defendant, with respect to enforcement of the Ordinance.

56. A declaratory judgment as to the constitutionality of the Ordinance will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

INJUNCTIVE RELIEF ALLEGATIONS

57. Plaintiffs have no adequate remedy at law to address the infringement of their free speech rights effected by the Ordinance and under color of state law.

58. There is a substantial likelihood that Plaintiffs will succeed on the merits of their claims that the sign ban portion of the Ordinance violates the First Amendment.

59. Under the challenged Ordinance, Plaintiffs are required to take down the signs by which they are engaging in free speech on their property by July 15, 2016, on penalty of fines of \$500.00 per violation.

60. Plaintiffs must immediately cease from speaking on their own beachfront property by means of signs or else suffer civil penalties for continuing in such speech.

61. Plaintiffs will suffer irreparable injury absent a permanent injunction restraining Defendant from enforcing the Ordinance.

62. Plaintiffs' injury—the immediate and unconstitutional prohibition on their free speech rights on their own property—outweighs any harm the injunction might cause Defendant.

LEGAL CLAIMS

Count I: Violation of First Amendment Rights on Private Property Under Color of State Law

63. Plaintiffs incorporate and reallege the allegations of Paragraphs 1 through 62 as if fully set forth herein.

64. This claim is brought pursuant to the First Amendment to the U.S. Constitution, as incorporated against the states by the Fourteenth Amendment, and under 42 U.S.C. § 1983.

65. Plaintiffs have a constitutional right, under the First Amendment, to use signs on their own property to convey messages to the general public and government, including messages about the status of their private property.

66. Under color of state law, the County has enacted an Ordinance that bans all signs on private beach property immediately adjacent to the public beach—the location of a large public and government audience with which Plaintiffs wish to communicate.

67. The Ordinance prevents beachfront owners from using the common medium of a sign on their property to convey messages, including those advising of property boundaries, to members of the public near the Property, and to those who might otherwise mistake it as public land.

68. The Ordinance bans all forms of signs—political, commercial, and advisory—on private dry beach parcels adjacent to the public beach.

69. The Ordinance is overbroad and prohibits too much speech.

70. The Ordinance is not a reasonable time, place, and manner regulation.

71. The Ordinance leaves no reasonable, alternative channels for beachfront owners to communicate messages to people on the public beach and near their property.

72. The Ordinance leaves no reasonable channel for Plaintiffs and other beachfront owners to communicate to the nearby beachgoing public that their dry sand property is private and not open to public use.

73. The County's interest in regulating clutter on beaches does not outweigh the Goodwins' and other owners' interest in speaking through signs on their own property.

74. The Ordinance contains no waiver provision or administrative remedy and, in any event, Plaintiffs need not exhaust administrative remedies to bring this claim.

75. This claim is ripe for immediate resolution in federal court.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

a. entry of judgment declaring that the Ordinance violates the First Amendment and 42 U.S.C. § 1983 on its face by banning signs;

b. entry of judgment declaring that the Ordinance is invalid and unenforceable;

c. a preliminary injunction prohibiting the County from enforcing the Ordinance;

d. a permanent injunction prohibiting the County from enforcing or taking further action to enforce the Ordinance;

e. an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

f. all further legal and equitable relief as the Court may deem just and proper.

DATED: July 18, 2016.

Respectfully submitted,

s/ Christina M. Martin

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