

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JASON RICHER,
Plaintiff

v.

JASON PARMELEE as the Finance Director of
THE TOWN OF NORTH SMITHFIELD,
TOWN OF NORTH SMITHFIELD, and
STEVEN E. REYNOLDS in his official
capacity as Chief of the NORTH SMITHFIELD
POLICE DEPARTMENT
Defendants

C.A. No. 18-578

**VERIFIED COMPLAINT FOR VIOLATION OF CONSTITUTIONAL AND CIVIL
RIGHTS SEEKING INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES**

PRELIMINARY STATEMENT

Plaintiff Jason Richer brings this Complaint seeking damages, injunctive and declaratory relief requiring Defendants to remove a “Note” from the North Smithfield Police Department’s “Contact Information” respecting him that says he is “psychologically unstable and should be considered dangerous” and “USE CAUTION” because those comments are false, Defendants admit they have no factual basis for the comments, and Plaintiff reasonably fears that in any future contacts with NSPD officers those comments may cause them to shoot or otherwise injure him in the mistaken belief that he is dangerous. The Note chills Plaintiff’s exercise of his constitutional rights and Defendant’s refusal to remove the Note from the Contact Information violates Plaintiff’s rights. Mr. Richer has suffered mental distress and anguish as a result.

PARTIES

1. Plaintiff Jason Richer is a natural person and citizen of the United States and of the State of Rhode Island, residing in North Smithfield, Rhode Island.

2. Defendant Town of North Smithfield (“the Town”) is a town chartered by the State of Rhode Island. Defendant Steven E. Reynolds is the Chief of the North Smithfield Police Department (“NSPD”). As such, he is responsible for formulating, executing and administering with the Town the laws, customs, practices, and policies at issue in this lawsuit. Through its Police Department, the Town has enforced the challenged laws, customs and practices against Plaintiff.
3. Defendant Jason Parmelee is the Finance Director of the Town of North Smithfield. As such, he is responsible for directing and coordinating the operations of the various divisions of the Finance Department and serves as Treasurer/Collector for the Town of North Smithfield.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 as this case involves a federal question pertaining to the United States Constitution. The Court has pendent jurisdiction over Plaintiff’s claims arising under state law.
5. Venue lies in this Court pursuant to 28 U.S.C. § 1391 as this is the judicial district where defendants reside and this is the judicial district where the cause of action arose.

STATEMENT OF FACTS

6. Mr. Richer is a physical disabled Air Force veteran who received an honorable discharge in August of 1986. He is the father of three sons, two of whom reside with him.
7. In September 2008, Mr. Richer legally obtained and possessed three guns, a Remington 1100 shotgun which he obtained in 1979, a Thompson Center .50 caliber black powder muzzleloader obtained in 1993, and a .22 caliber bolt action rifle obtained in 1982. He

has completed a hunter safety course and received weapons training while in the military.

He is well trained in gun safety and maintenance.

8. On or about September 28, 2008, North Smithfield police officers, including Russell Amato, Steven Riccitelli, and Gregory Landry, and North Smithfield Rescue paramedics went to Mr. Richer's residence at 7 Mattity Road, North Smithfield, RI in response to a call from his now ex-wife, Tracy Richer, who said she was concerned Mr. Richer had tried to harm himself by taking an overdose of pills.
9. The officers informed Mr. Richer they were there to check on his well-being.
10. Mr. Richer informed the officers that he was not suicidal and his wife had misconstrued his earlier actions and conversation.
11. The North Smithfield police insisted that Mr. Richer submit to a mental health evaluation and he was transported to Landmark Medical Center in Woonsocket, Rhode Island for evaluation. The doctor at the hospital who examined him discharged him within a few minutes of arrival without further evaluation.
12. The police officers removed from Mr. Richer's home the three guns and transported them to NSPD headquarters for "safe keeping."
13. On information and belief, the NSPD researched all of the firearms seized through the National Crime Information Center (NCIC) and with all being found negative for any criminal activity.
14. Mr. Richer was not charged with any crime nor has he ever been charged with any crime.
15. On or about November 24, 2008, Mr. Richer's then-psychologist, John Murphy, Psy.D., gave Mr. Richer a letter addressed to the North Smithfield Police Department attesting that Mr. Richer was not a danger to himself or others and that there is no reason why

returning his guns to him would pose a risk. Mr. Richer enclosed a copy of the letter in his December 16, 2009 letter to the NSPD about his guns. A true and accurate copy of the letters are attached as Exhibits A and B, respectively.

16. The North Smithfield Police Department maintains a "Contact Information" computer file on each person with whom it has had contact, including Mr. Richer. Capt. Tim Lafferty testified at deposition in a related action, C.A. 15-162, that the purpose of the Contact Information is to provide NSPD officers with "any particular facts that an officer should know when responding to the residence or dealing with that particular person." (Excerpts of Capt. Lafferty's deposition are attached as Exhibit C).
17. Two different versions of Mr. Richer's Contact Information were marked as exhibits 12 and 30 during depositions in the C.A. 15-162 matter. (Copies of those exhibits are attached as Exhibits D and E, respectively).
18. On or about November 11, 2009, Officer Amato, who wore badge no. 24 when he was an NSPD officer, caused a NSPD dispatcher to enter the following into the "Notes" section of Mr. Richer's "Contact "Information" (the "Note"):

"11/06/2009 1213--Subject is psychologically unstable and should be considered dangerous. We have taken weapons out of his house in 2008 however 24 states there are more inside the residence. USE CAUTION." (Id.).
19. At the time, Mr. Richer had no knowledge that the Note had been placed in the NSPD records.
20. Since September 28, 2008, Mr. Richer has had occasional contact with officers of the NSPD, largely on issues regarding his use of medical marijuana, ongoing disputes with a neighbor over Mr. Richer's property line, and damage to his property by others. At no

time during these contacts has Mr. Richer brandished any weapons, made any threats of violence or otherwise acted in any manner that would lead a person to believe he was psychologically unstable or should be considered dangerous.

21. On April 23, 2015, Mr. Richer filed the C.A. 15-162 action and filed a motion for temporary, preliminary, and permanent injunctive relief seeking the return of his firearms. Defendants finally agreed to return his seized firearms without an order of this Court.
22. Mr. Richer first learned of the Note on or about May 12, 2017, when Defendants produced his “Contact Information” in the C.A. 15-162 action.
23. On April 24, 2018, Mr. Richer’s attorneys deposed Chief Reynolds. He testified that he knew of no factual basis for the Note. (Excerpts of Chief Reynold’s deposition attached as Exhibit F). He also testified that NSPD officers are not qualified to make a determination that a person is psychologically unfit. (Id., pp. 135-36). He said medical personnel would have to make that determination. (Id.).
24. On May 3, 2018, Mr. Richer’s attorneys deposed Russell Amato.¹ He confirmed that he provided the Note to an NSPD dispatcher to be included in the Contact Information. (Excerpts of Russell Amato’s deposition attached as Exhibit G). Amato testified that the purpose of such notes is to “put an alert out, if an officer was responding to the residence for any reason.” (Id., p. 98). He testified that he had no reason to believe Mr. Richer was psychologically unstable in November 2009. (Id., pp. 101-02). Amato testified he had no reason to believe that Mr. Richer should be considered dangerous. (Id., p. 102). He testified that he had no reason to believe Mr. Richer had any other firearms after NSPD

¹ Mr. Amato is now retired from the NSPD.

seized Mr. Richer's firearms on September 28, 2008. (Id.). He said he caused the Note to be made because Mr. Richer was "not approachable." (Id., p. 103).

25. Mr. Richer's attorneys also deposed Officers Riccitelli and Landry. Both of those other officers testified that they know of no factual basis for the Note. (Excerpts of the depositions of Officers Riccitelli and Landry attached as Exhibits H and I, respectively).
26. Mr. Richer reasonably believes that in future contacts with NSPD officers the Note puts him at increased risk of being shot and killed or otherwise injured by NSPD officers who may mistakenly believe that he is psychologically unstable and should be considered dangerous. Accordingly, Mr. Richer fears leaving home, no longer goes for walks which would help with his medical issues, has lost trust in law enforcement, and is more concerned about reporting matters to the police. Further, knowledge that the Note is in Mr. Richer's Contact Information has caused him increased mental distress and anguish, including aggravating his agoraphobia.
27. On August 2, 2018, Mr. Richer's attorneys sent an email to Defendants' attorneys in the C.A. 15-162 lawsuit requesting that Defendants remove the Note from Mr. Richer's Contact Information because "Mr. Richer is concerned that this note puts him at risk anytime he may encounter a police officer who sees it and who thinks Mr. Richer is dangerous."
28. On August 27, 2018, Defendants' attorneys responded by email stating that Defendants would not remove the Note because it was "best to maintain the status quo until the end of the case."

**Count I-Violation of Plaintiff's Rights Under the First Amendment and Art. 1, Sec. 21
of the Rhode Island Constitution**

29. Realleges the allegations of Paragraphs 1 through 28.

30. The First Amendment of the United States Constitution provides that government “shall make no law...abridging the freedom of speech...or to petition the Government for a redress of grievances.”
31. Article 1, Section 21 of the Rhode Island Constitution states: “The citizens have a right in a peaceable manner...to apply to those invested with the powers of government, for redress of grievances...No law abridging the freedom of speech shall be enacted.”
32. Both the First Amendment and Article 1, Section 22 of the Rhode Island Constitution protect the rights of a citizen like Mr. Richer to communicate with the NSPD respecting complaints or concerns he may have.
33. The purpose of the Note is to alert police officers of possible dangers when they interact with Mr. Richer or they go into his home. The Note increases the possibility that a police officer, believing Mr. Richer to be psychologically unstable, dangerous, and heavily armed, may overreact to some action or statement by Mr. Richer and shoot him and other members of his household.
34. By placing and keeping the Note in Mr. Richer’s Contact Information without adequate factual basis, Defendants violate Mr. Richer’s rights under the First Amendment of the United States Constitution and Art. 1., Sec. 22 of the Rhode Island Constitution by chilling Mr. Richer’s exercise of his rights to be communicate with the NSPD.
35. Defendants’ actions have caused Mr. Richer increased mental anguish and distress.

**Count II– Violation of Plaintiff’s Rights Under the Fourth Amendment
and Art. 1, Sec. 6 of the Rhode Island Constitution**

36. Realleges the allegations of Paragraphs 1 through 35 are incorporated as though fully stated herein.

37. The Fourth Amendment of the United States Constitution provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
38. Article 1, Section 6 of the Rhode Island Constitution provides: “The right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on complaint in writing, upon probable cause, supported by oath or affirmation, and describing as nearly as may be, the place to be searched and the persons or things to be seized.”
39. Both the Fourth Amendment and Article 1, Section 6 of the Rhode Island Constitution protect a citizen like Mr. Richer from unreasonable searches and seizures including being shot and killed or otherwise wounded by a police officer without legal justification.
40. The purpose of the Note is to alert police officers of possible dangers when they interact with Mr. Richer or they go into his home. The Note increases the possibility that a police officer, believing Mr. Richer to be psychologically unstable, dangerous, and heavily armed, may overreact to some action or statement by Mr. Richer and shoot him and other members of his household.
41. By placing and keeping the Note in Mr. Richer’s Contact Information without adequate factual basis, Defendants violate Mr. Richer’s rights under the Fourth Amendment of the United States Constitution and Art. 1., Sec. 6 of the Rhode Island Constitution by chilling Mr. Richer’s exercise of his rights to be secure in his person and in his house from unreasonable searches and seizures.

42. Defendants' actions have caused Mr. Richer increased mental anguish and distress.

Count III– Violation of Plaintiff's Procedural Due Process Rights Under the Fourteenth Amendment and Art. 1, Sec. 8 of the Rhode Island Constitution

43. Realleges the allegations of Paragraphs 1 through 42.

44. The Fourteenth Amendment of the United States Constitution provides, in part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law...”

45. Art. 1, Sec. 2 of the Rhode Island Constitution states, in part: “No person shall be deprived of life, liberty or property without due process of law...”

46. Both the Fourteenth Amendment and Article 1, Section 2 of the Rhode Island Constitution protect a citizen like Mr. Richer from being deprived of his life or liberty without due process of law.

47. By placing and keeping the Note in Mr. Richer's Contact Information without any notice or adequate factual basis, and without giving him an opportunity to be heard respecting the statements in the Note, Defendants threaten to deprive and have deprived Mr. Richer of his life or liberty without due process of law.

48. Defendant's actions have caused Mr. Richer increase mental anguish and distress.

Count IV-Violation of Plaintiff's Substantive Due Process Rights Under the Fourteenth Amendment and Art. 1, Sec. 8 of the Rhode Island Constitution

49. Realleges the allegations of Paragraphs 1 through 48.

50. Defendants have deprived Mr. Richer of his right to be secure in his person and his house by placing and maintaining a Note in his Contact Information that states he is “psychologically unstable,” that he “should be considered dangerous,” and that he has more firearms than the three they seized from him in September 2008.

51. The purpose of the Note is to alert police officers of possible dangers when they interact with Mr. Richer or they go into his home. The Note increases the possibility that a police officer, believing Mr. Richer to be psychologically unstable, dangerous, and heavily armed, may overreact to some action or statement by Mr. Richer and shoot him and other members of his household.
52. Defendants' actions in creating and maintaining the Note are arbitrary and capricious and shock the conscience because Defendants admit that they do not have a factual basis for the statement in the Note, that they are not competent to assess whether Mr. Richer is psychologically fit, and that the reason the Note was created was that Mr. Richer was "not approachable."
53. Defendants have no legitimate governmental interest in creating and maintaining the Note.
54. As a result, Mr. Richer's increased and reasonable fear of contact with the police has constrained him from contacting the police when he otherwise would have done so. Moreover, Mr. Richer is more reluctant to leave his house and to go outside where he might encounter the police. Accordingly, Defendants' actions have chilled Mr. Richer's right to be secure in his person and in his house.
55. Defendants' actions have caused Mr. Richer increased mental anguish and distress.
56. Defendants' actions violate Mr. Richer's substantive due process rights under the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution.

Prayer for Relief

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Defendants as follows:

1. Declaratory relief that the Note in Mr. Richer's Contact Information violates Mr. Richer's constitutional rights under the First Amendment of the United States Constitution and Article 1, Section 21 of the Rhode Island Constitution; under the Fourth Amendment of the United States Constitution and Article 1, Section 6 of the Rhode Island Constitution; under the Fourteenth Amendment and Article 1, Section 8 of the Rhode Island Constitution; and under the Americans with Disabilities Act.
2. An order preliminarily and permanently requiring Defendants, their officers, agents, servants, employees, to remove the Note from Mr. Richer's Contact Information;
3. An order requiring Defendants to inform any police officer who may have seen the Note that Mr. Richer is not "psychologically unstable" and should not be "considered dangerous";
4. Compensatory and punitive damages in an appropriate amount;
5. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205;
6. Any other relief as the Court deems just and appropriate.

JASON RICHER

By his attorney,

/s/ Thomas W. Lyons

Thomas W. Lyons #2946

Rhiannon S. Huffman #8642

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PLAINTIFF HEREBY DEMANDS TRIAL BY JURY OF ALL ISSUES SO TRIABLE.