

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STEPHEN M. HUNTER,	:	
Plaintiff	:	
v.	:	C.A. No. 17-
	:	
CITY OF CRANSTON, by and	:	<u>Jury Trial Demanded</u>
through its Financial Director, Robert	:	
F. Strom, alias, SHARON CAVALLORO,:	:	
alias, individually and in her capacity as	:	
Code Compliance Officer for the City, and:	:	
JOHN DOES 1-10, alias,	:	
Defendants	:	

COMPLAINT

I. Introductory Statement

This action is brought by the Plaintiff seeking declaratory and injunctive relief and compensatory and punitive damages for acts and/or omissions of Defendants in violation of Plaintiff’s rights to freedom of speech and equal protection of the law under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983, and Article 1, §§ 2 and 21 of the Rhode Island Constitution.

II. Parties

1. Plaintiff Stephen M. Hunter (“Plaintiff”) is a resident of the City of Cranston, County of Providence and State of Rhode Island.
2. Defendant City of Cranston (“City”) is a duly authorized and organized municipality under the laws of the State of Rhode Island and is sued by and through its Financial Director, Robert F. Strom, alias, the official designated by state law, R.I.G.L. §45-15-5, to be named in a suit for relief against the City.
3. Defendant Sharon Cavalloro, alias, at all relevant times, was employed as the designated Code Compliance Officer for the Building/Zoning Minimum Housing Department of the City and is sued in her individual and representative capacities.

4. Defendants, John Does 1-10, alias (“John Doe”), are employees, agents and/or representatives of the City and/or other persons acting, directly or indirectly, under color of authority of the City with respect to the acts and/or omissions complained of herein and/or conspired together with the named Defendants to commit the same and are sued in their individual capacity and representative capacity, if any.

III. Jurisdiction

5. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343, 1367, 2201 and 2202.

IV. Venue

6. Venue is proper in this Court since, on information and belief, all of the Defendants reside or may be found in the District of Rhode Island in compliance with the requirements set forth in 28 U.S.C. §1391.

V. Material Facts

7. Cranston has an ordinance, § 5.08.010, which states that “[n]o person shall advertise any goods, wares, or merchandise, or occupation or business by painting or posting any writing, painting, sign or device upon any fence, rocks, poles or other property in any of the public highways of the city, or upon any fence, rocks, trees, poles, building or other property belonging to the city.”

8. Despite this ordinance it is common practice for businesses and individuals to post signs covered by the ordinance on telephone poles and sidewalks throughout the City.

9. Indeed telephone poles at major intersections are generally covered with a large number of signs.

10. Similarly most major streets have a number of signs placed out on the sidewalk.

11. Nevertheless it is common practice of City officials and employees to leave such signage up and to take no action to enforce the above mentioned ordinance.

12. On information and belief, since Plaintiff began putting signs up nearly four (4) years ago, with the exception of signs belonging to Plaintiff, Plaintiff is unaware of any instance where the City has targeted and directed the removal of all signs of a particular business.

13. Plaintiff had approximately forty (40) signs up on telephone poles at various intersections throughout the City.

14. Plaintiff's signs advertise his legal practice, in particular the services and pricing he offers for representing clients in bankruptcy matters.

15. In August or September of 2016 Plaintiff was driving through the intersection of Garden City Drive and Reservoir Avenue and saw City Department of Public Works (hereinafter "DPW") workers taking down his signs.

16. The DPW workers were only taking down Plaintiff's signs, not the numerous other signs advertising businesses and services on the telephone poles at that intersection.

17. Plaintiff stopped to speak with the DPW workers and ask them what they were doing.

18. DPW workers responded that they were doing what their boss told them to, specifically taking down Plaintiff's signs but no others.

19. The DPW workers indeed only took down Plaintiff's signs.

20. On or about October 20th, a colleague of Plaintiff told him that a member of the City Council, Michael Fevecchio, had told him that the City was going to crack down on Plaintiff and his signs.

21. On October 24th, Plaintiff received a voice mail message from Defendant Cavalloro, alias, an employee in the City Inspections Department, saying he needed to remove all his signs throughout the City and to cease putting them up.

22. Upon information and belief, no other people or entities with signs up in the City received similar calls.

23. Plaintiff responded to this call by faxing and emailing a response to the City Solicitor's office, the Mayor's office, and all City Council Members on the same day objecting to the selective enforcement of the City sign ordinance against him.

24. On November 3rd, 2016 Plaintiff received, from the City of Cranston through Defendant Cavalloro, what purported to be a "Second and Final Notice" of violation of the City ordinance 5.08.010 dated November 1, 2016.

25. Plaintiff had never before received any formal written notice, although he had received the aforementioned call from Defendant Cavalloro.

26. Later the same day Jeff Barone, the Mayor's Deputy Administrator, called Plaintiff in response to his email to the Mayor's office.

27. Jeff Barone stated that someone complained about the signs and that the City would be contacting all violators and taking action against all signs.

28. The day before, November 2, 2016, Plaintiff had also received a call from someone claiming to be from the City who identified themselves as Vinny Tescanado (phonetic), saying that a crew of workers were going out the next day (they day Plaintiff actually received the above notice) to take down his signs, bring them to his office, and charge him \$400 a sign "for loitering in the City of Cranston" finishing the call by shouting "That's Enough!"

29. The "Second and Final Notice" copied Jeff Barone at the Mayor's office, something which is, upon information and belief, not common practice.

30. As of the filing of this Complaint, signs posted in violation of city ordinance, § 5.08.010 continue to remain posted all over the City.

31. The only signs in the City which appear to have been removed since Plaintiff was cited are those changed or removed through normal attrition by individuals posting newer signs to replace their older ones or replacing existing signs of others with their own or voluntarily removing their signs for other reasons.

32. The only signs that appear to have been removed as a result of City actions were the signs belonging to Plaintiff taken down by DPW workers outlined above and the signs Plaintiff took down based on the demands of the City on or around November 3, 2016, which included all remaining signs advertising Plaintiff's practice that he could locate.

33. On November 19, 2016 Plaintiff put up an A-frame sign 3' by 4' in dimension on the grass outside the office where he operates his law practice, located at 1200 Reservoir Avenue, Cranston, Rhode Island ("Office").

34. On December 5, 2016 Plaintiff filed a records request with the City Inspection Department pursuant to R.I.G.L. § 38-2-1 *et. seq.* requesting the following records:

- a. All telephone call log records, written or recorded, to all code violators of the City of Cranston Sign Ordinance § 5.08.010 made between the dates of October 1, 2016 and December 5, 2016; and,
- b. All written notices of all code violators that have been mailed out by your office to all code violators of the City of Cranston Sign Ordinance § 5.08.010 between the dates of October 1, 2016 and December 5, 2016.

35. On December 1, 2016 the City, once again through Defendant Cavalloro, sent a notice of violation to the Office stating that any sign required a permit under City Ordinance § 17.72.010.

36. A colleague with whom Plaintiff shares space at the Office alerted Plaintiff to this violation notice on December 6th, 2016.

37. On December 7th and 8th Plaintiff left voice messages for Defendant Cavalloro requesting information regarding the permit process the City was demanding he go through.

38. Defendant Cavalloro called Plaintiff back on December 9th, 2016 and Plaintiff went to the Inspections office to get the permit application.

39. On December 12, 2016 Plaintiff filed an application for a permit for the above mentioned A-frame sign.

40. Plaintiff tendered to the City the required seventy-five (\$75) dollar sign permit fee in conjunction with the submission of a completed application to the City.

41. Plaintiff never received a reply to this application.

42. Accordingly, he called Defendant Cavalloro a few weeks later to inquire as to the status of his application and he was told "it was all set."

43. There are numerous A-frame or sandwich board type signs in front of businesses throughout the City, including ones on City sidewalks.

44. Upon information and belief, businesses have typically not been required to file a permit application for such signs.

45. Defendant Cavalloro stated that Plaintiff's application had been approved and mailed but, to date, Plaintiff has never received any written response to his application.

46. On December 16, 2016 Plaintiff received a reply to his records request in which the City, through City Solicitor Christopher M. Rawson, affirmed that no telephone call log records, written or recorded, existed with regards to his request nor were there any notices sent to purported violators of the City of Cranston Sign Ordinance § 5.08.010.

47. This comports with Plaintiff's understanding that the ordinances in question are not being enforced against anyone else by the City.

48. In early February, 2017 Plaintiff received a call on the phone line he uses for another business he owns, a "Maidpro" franchise, demanding that he stop putting up signs for that business and take down those that are up.

49. Since the Plaintiff's signs were removed, no other signs have been taken down by the City.

50. Upon information and belief, since the Plaintiff's signs were removed no other persons or businesses with signs posted in violation of § 5.08.010 have received notices of violations or communications from the City demanding removal of their signs.

51. Moreover, the City has permitted and continues to permit others to erect and post signs in the city in violation of City of Cranston Sign Ordinance § 5.08.010, and has taken no action to remove or demand the removal of such illegally posted signs.

52. The actions of the City with regard to Plaintiff's signs and the resulting lack of advertising for Plaintiff's business has adversely impacted Plaintiff's business.

Municipal Liability

53. The City failed to properly select, train, instruct, supervise and/or discipline its employees, agents, and/or representatives or those acting under its authority or on its behalf relative to refraining from invidious and selective enforcement of its ordinances, in particular, City of Cranston Sign Ordinance § 5.08.010 and § 17.72.010.

54. That, on information and belief, during all relevant time periods, a custom or policy existed in the City wherein the Defendant City acquiesced to, permitted, condoned and/or encouraged the invidious and selective enforcement of its ordinances, in particular, City of Cranston Sign Ordinance § 5.08.010 and § 17.72.010.

55. The Defendants knew or should have known that invidious selective enforcement of its ordinances, in particular, City of Cranston Sign Ordinance § 5.08.010 and § 17.72.010, against Plaintiff would violate Plaintiff's right to freedom of expression and equal protection of the law based on well settled law.

56. Despite such knowledge, the Defendants, by and through their policy-making officials and agents, approved, acquiesced to, condoned, intentionally ignored, or were deliberately indifferent to such practice, and failed to change or eliminate such unlawful custom or policy.

Intentional Conduct

57. At all relevant times, Defendants acted intentionally, willfully, maliciously, and/or with reckless or callous indifference to Plaintiff's clearly established constitutional rights.

58. Furthermore, at all relevant times, Defendants knew or should have known that their conduct would cause or contribute to the deprivation of Plaintiff's clearly established civil rights.

59. At all relevant times, Defendants were motivated by malice, wantonness and/or willfulness of an extreme nature akin to criminality.

Restrictions on Plaintiff's Free Speech

60. Plaintiff's right to freedom of expression was and continues to be substantially damaged and curtailed as a result of the conduct of Defendants.

61. Plaintiff has every reason to believe Defendants will continue to wrongfully and selectively enforce the City of Cranston Sign Ordinance § 5.08.010 against Plaintiff.

62. Accordingly, Plaintiff has refrained from posting any signs in the City in violation of the City of Cranston Sign Ordinance § 5.08.010 while his business competitors and others are permitted to advertise and exercise their free expression rights.

63. On information and belief, Plaintiff's speech has been targeted for suppression based on the source, viewpoint, and/or content of his speech.

Irreparable Harm and Damages

64. The Defendants' foregoing acts and/or omissions constitute a violation of the Plaintiff's right to freedom of speech and equal protection of the law protected under the First and Fourteenth Amendments to the United States Constitution and Article 1, §§ 2 and 21 of the Rhode Island Constitution.

65. The Defendants' actions have placed Plaintiff in the position of either refraining from engaging in the same freedom of expression as others posting signs in the City in violation of the City of Cranston Sign Ordinance § 5.08.010 or face enforcement action and prosecution by the City.

66. That, as a direct and proximate result of the Defendants' acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered and will continue to suffer deprivation of his First Amendment freedom of expression rights, and has thereby sustained and will continue to sustain irreparable harm.¹

67. That, as a direct and proximate result of the Defendants' acts and/or omissions, including but not limited to those described herein, the Plaintiff has suffered and will continue to suffer mental anguish, pain and suffering, injury to reputation, impairment of his freedom of expression rights, deprivation of his civil rights, expenses for legal services, loss of business income and profit, and other great damage.²

¹ *Elrod v. Burns*, 427 U.S. 347, 373 (1976)(even temporary deprivation of First Amendment freedom of expression rights is sufficient to establish irreparable harm); *see also Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975).

² *Carey v. Phipus*, 435 U.S. 247, 266-267 and n. 24 and n. 25 (1978).

VI. Claims for Relief

68. Plaintiff incorporates in the counts below the allegations contained in ¶¶1 through 67 above.

COUNT ONE

Impairment of Freedom of Speech in Violation of 42 U.S.C. §1983

69. Defendants, acting under the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions on his freedom of expression in violation of Plaintiff's right to freedom of speech, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983.

COUNT TWO

Impairment of Freedom of Speech in Violation of Article 1, §21 of the Rhode Island Constitution

70. Defendants, acting under the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have deprived Plaintiff of and placed unlawful restrictions on his freedom of expression in violation of Plaintiff's right to freedom of speech, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under Article 1, §21 of the Rhode Island Constitution.

COUNT THREE

Selective Enforcement in Violation of 42 U.S.C. §1983

71. Defendants, acting under the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have violated Plaintiff's right to equal protection of the law, causing Plaintiff to suffer harm as

aforesaid, and have thereby deprived Plaintiff of rights secured under the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983.

COUNT FOUR

Selective Enforcement in Violation of Article 1, §2 of the Rhode Island Constitution

72. Defendants, acting under the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have violated Plaintiff's right to equal protection of the law, causing Plaintiff to suffer harm as aforesaid, and have thereby deprived Plaintiff of rights secured under Article 1, §2 of the Rhode Island Constitution.

VII. Prayers for Relief

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. Preliminary and permanent injunctions restraining and enjoining Defendants from interfering with the exercise of the Plaintiff's right to freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article 1, §21 of the Rhode Island Constitution;

2. Preliminary and permanent injunctions restraining and enjoining Defendants from interfering with the exercise of the Plaintiff's right to equal protection of the law guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article 1, §2 of the Rhode Island Constitution;

3. A declaratory judgment that the Defendants, in the manner described herein, violated the First and Fourteenth Amendments to the United States Constitution and Article 1, §2 and §21 of the Rhode Island Constitution by impairing and interfering with Plaintiff's rights to freedom of speech and equal protection;

4. An award of compensatory damages;

5. An award of punitive damages;

6. An award of reasonable attorney's fees and costs of litigation to Plaintiffs pursuant to 42 U.S.C. §1988;

7. Such other and further relief as this Court deems just and proper.

VIII. Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

Plaintiff, **Stephen M. Hunter**
By his attorneys,

Date: May 2, 2017

/s/ Richard A. Sinapi
Richard A. Sinapi, Esq. (#2977)
American Civil Liberties Union of Rhode Island
Sinapi Law Associates, Ltd.
2374 Post Road, Suite 201
Warwick, RI 02886
Phone: (401) 739-9690; FAX: (401) 739-9040
ras@sinapilaw.com