



### **PRELIMINARY STATEMENT**

1. This 42 U.S.C. § 1983 action seeks declaratory and injunctive relief for improper interference with the constitutional rights of the plaintiffs. At this time, the plaintiffs seek no monetary damages. The plaintiffs seek only equitable relief. Plaintiffs seek attorney fees and costs under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

### **JURISDICTION & VENUE**

2. Jurisdiction is proper in this Court under 42 U.S.C. § 1983 and § 1988 as well as 28 U.S.C. § 1343, and arises in order to enforce provisions of the United States Constitution. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. This Court has supplemental jurisdiction to hear plaintiffs' state constitutional claims arising from the same factual situation.

3. Venue is proper in the Northern Division of the United States District Court for the District of Utah because the misconduct of defendants occurred and will occur in Morgan County, State of Utah and in the Northern Division of this Court.

Defendants' place of businesses is in Weber County, State of Utah and in the Northern Division of this Court.

#### **PARTIES**

4. **SALT LAKE ANIMAL ADVOCACY MOVEMENT ("SLAAM")** is an unincorporated association headquartered in Salt Lake City, Utah. Founded in 2007, SLAAM is an animal rights organization. SLAAM operates under the simple principle that animals are not ours to eat, wear, experiment on or use for entertainment. SLAAM is dedicated to establishing and protecting the rights of all animals. SLAAM works through public education, research, cruelty investigations, animal rescue, legislation, special events, celebrity involvement and direct action to accomplish its goals. SLAAM provides information and educates people with regard to the ethical treatment of animals; among other methods it does so through the distribution of flyers and literature and public demonstrations. As a non-profit entity SLAAM has no stockholders or owners; it has members. SLAAM brings this lawsuit on its own behalf and on behalf of its members and supporters.

5. **JEREMY BECKHAM** is an adult citizen and resident of Salt Lake County and the State of Utah. He is a member of SLAAM. He has acted in a coordinator role for SLAAM. He supports the purposes, ideals and goals of SLAAM. For more than eight (8)

years he has participated in public education and outreach activities in support of animal rights. He has participated in various activities, free speech and public demonstrations sponsored by SLAAM. He plans to continue to do so in the future.

6. **COLLEEN HATFIELD** is an adult citizen and resident of Salt Lake County and the State of Utah. She is a member of SLAAM. She has acted in a coordinator role for SLAAM. She supports the ideals, purposes and goals of SLAAM. For more than eight (8) years she has participated in public education and outreach activities in support of animal rights. She has participated in various activities, free speech and public demonstrations sponsored by SLAAM. She plans to continue to do so in the future.

7. The UTAH DEPARTMENT OF TRANSPORTATION is a governmental entity created by the statutes of the State of Utah. It is the employer and principal of the individual defendants named in this action.

8. **RODGER "JAY" GENEREUX** is an adult citizen and resident of the State of Utah. He is an agent and employee of the Utah Department of Transportation. He is a Permits Officer II. He is charged with the duty and responsibility of issuing permits for special events (including free speech demonstrations) that occur

in and on the right-of-way of state highways owned by the State of Utah in Morgan County, State of Utah.

9. **TOMMY VIGIL** is an adult citizen and resident of the State of Utah. He is an agent and employee of the Utah Department of Transportation. He is a Right-of-Way Control Supervisor. He is the supervisor of GENEREUX. He is charged with the duty and responsibility of issuing permits for special events (including free speech demonstrations) that occur in and on the right-of-way of state highways owned by the State of Utah in Morgan County, State of Utah.

10. **JOHN DOES I - V** are adult citizens and residents of the State of Utah. They are agents and employees of the Utah Department of Transportation. They are charged with the duty and responsibility of issuing permits for special events (including free speech demonstrations) that occur in and on the right-of-way of state highways owned by the State of Utah in Morgan County, State of Utah.

11. The true, full and correct names of the defendants JOHN DOES I - V are currently unknown to plaintiffs. When plaintiffs discover the full true and correct names of those defendants, plaintiffs will seek leave of the court and amend this complaint.

12. The individual defendants are sued personally as well as in their official capacity.

13. At all times pertinent to this action, the defendants were acting under color of state law, with powers vested in them by the State of Utah and within the scope of their authority granted by Utah State law, policies and practices.

#### **GENERAL FACTS**

14. SLAAM has in the past conducted public demonstrations and protests with regard to animal rights issues in Utah. SLAAM has done so on or adjacent to public streets and highways and on public side walks.

15. SLAAM plans to conduct demonstrations, parades and/or other activities in Morgan County, Utah on Saturday, November 28, 2009. The activities include picketing, marching, singing, carrying signs, chanting, handing out literature, leaflets, flyers and stickers and circulating petitions.

16. JEREMY BECKHAM and COLLEEN HATFIELD plan to join with other members and supporters of SLAAM on Saturday, November 28, 2009 and participate in the above described activities.

17. SLAAM plans to conduct said public demonstrations and protests on the public sidewalks which are part of the public right-of-way in Morgan, Utah.

18. Absent a permit issued by VIGIL, GENEREUX and the UTAH DEPARTMENT OF TRANSPORTATION, SLAAM can not legally conduct said

public demonstrations and protests on the public sidewalks which are part of the public right-of-way in Morgan, Utah.

19. Plaintiffs desire to exercise their constitutional rights to free expression and to peacefully assemble as set forth above.

20. Plaintiffs desire to exercise their constitutional rights to free expression and to peacefully assemble in a meaningful way, at meaningful times and places and to a meaningful audience.

21. Plaintiffs are entitled to exercise the above described constitutional rights at a place and during a time when meaningful communication with members of the public can occur.

22. Plaintiffs are entitled to exercise the above described constitutional rights in a meaningful way at meaningful times and places to a meaningful audience.

#### **OPERATIVE FACTS**

23. On July 28, 2009 SLAAM wrote the Morgan City Council to generally inform the Council of its intention to hold a protest and a demonstration in Morgan City on Saturday, November 28, 2009. A copy of that letter is attached as Exhibit "A."

24. In response to said letter, SLAAM was informed that a permit from the Utah Department of Transportation would be

required because some of SLAAM's activities would occur on Utah State Highway 66, which is State Street, a main thoroughfare in Morgan, Utah.

25. SLAAM applied to the Utah Department of Transportation for a permit to conduct the above described demonstrations, protests, parades, etc. That application specifically identifies the event as a free speech activity. A copy of that permit application is attached as Exhibit "B" (Application # 33083; dated 08/09/2009).

26. An email was sent to defendant RODGER JAY GENEREUX on September 28, 2009 inquiring as to the status of SLAAM's permit application. A copy of that email is attached as Exhibit "C".

27. An email was sent to defendant RODGER JAY GENEREUX on October 5, 2009 inquiring as to the status of SLAAM's permit application. A copy of that email is attached as Exhibit "D".

28. An email was sent to defendant RODGER JAY GENEREUX on October 7, 2009 inquiring as to the status of SLAAM's permit application. A copy of that email is attached as Exhibit "E".

29. On or about September 29, 2009 plaintiff COLLEEN HATFIELD received a voice mail on her telephone from some one (either GENEREUX or on behalf of GENEREUX) on behalf of the UTAH DEPARTMENT OF TRANSPORTATION responding to the several inquiries as to the status of SLAAM's permit application.

30. The voice mail of September 29, 2009 indicated that the permit application of SLAAM was received but would not be granted because:

a. SLAAM had not provided a \$1,000,000.00 liability insurance policy; and,

b. SLAAM had not provided written assurances that the Utah Highway Patrol will provide security for the event.

31. A supplement to the permit application was made on October 5, 2009 by HATFIELD which included a Route Map. A copy of that Route Map and Cover Sheet are attached as Exhibit "F".

32. The voice mail of September 29, 2009 was confirmed in an email from HATFIELD to GENEREUX dated October 7, 2009. A copy of that email is attached as Exhibit "E."

33. In the email of October 7, 2009, SLAAM specifically requested that the insurance policy requirement be waived. Id.

34. On the morning of October 12, 2009, HATFIELD received a voice mail on her phone from GENEREUX indicating that HATFIELD should speak to GENEREUX' supervisor, defendant TOMMY VIGIL.

35. During the late morning of October 12, 2009, HATFIELD personally spoke on the telephone with defendant TOMMY VIGIL regarding SLAAM's pending permit application.

36. During that phone conversation HATFIELD informed VIGIL that:

a. SLAAM was a small non-profit organization lacking resources to pay for an insurance policy;

b. The event was a free speech activity, a protest and demonstration; and,

c. That the cost of a million dollar insurance policy was a prohibitive burden on the organization.

37. During that late morning phone conversation of October 12, 2009, VIGIL informed HATFIELD that the liability insurance requirement would not be waived and that absent such an insurance policy the permit would not be issued. VIGIL also informed HATFIELD that SLAAM would be required to contact the Utah Highway Patrol to provide security for the event.

38. VIGIL told HATFIELD that if SLAAM conducted its protest and demonstration without a permit it would be illegal and participants could be arrested.

39. The contents of some of the late morning phone call between VIGIL and HATFIELD is confirmed in an email from GENEREUX to HATFIELD dated October 12, 2009 (2:35 PM). Copy attached hereto as Exhibit "G".

40. On October 15, 2009, HATFIELD in an email to GENEREUX, copied to VIGIL, responded to the October 12, 2009 email from GENEREUX indicating, *inter alia*, that (a) SLAAM's application previously made was still pending, (b) that the proposed activity

was a free speech event, (c) that SLAAM was a small non-profit organization with limited resources that could not afford a million dollar liability insurance policy, and (d) asking that any insurance requirement be waived. A copy of that email is attached hereto as Exhibit "H".

41. To date, VIGIL and GENEREUX have not responded to HATFIELD's email of October 15, 2009.

42. Defendants GENEREUX and VIGIL acting for and on behalf of the UTAH DEPARTMENT OF TRANSPORTATION refuse to issue a permit to SLAAM for demonstrations / protests to be held on the right-of-way and public sidewalk adjacent to Utah State Highway 66 in Morgan, Utah on Saturday, November 28, 2009 unless and until SLAAM:

- a. Provides a million dollar liability insurance policy, and
- b. Arranges for the Utah State Highway Patrol to provide security for the event.

**FIRST  
CAUSE OF ACTION**

43. The defendants can not condition the issuance of a permit for the exercise of free speech on an applicant securing and paying for a liability insurance policy.

44. The defendants can not condition the issuance of a permit for the exercise of free speech on an applicant securing and/or paying for security for the event.

45. The conduct of the defendants as set forth above constitutes an infringement of plaintiffs' expressive rights as protected by the United States Constitution (first amendment) and the Utah Constitution. Art. 1, § 15.

46. The plaintiffs are entitled to equitable relief in the nature of a temporary restraining order, preliminary injunction and a permanent injunction against the defendants from restricting plaintiffs' expressive rights under the United States and the Utah Constitutions as set forth herein.

47. The plaintiffs are entitled to equitable relief in the nature of a temporary restraining order, preliminary injunction and a permanent injunction against the defendants from requiring an insurance policy before allowing plaintiffs to engage in a first amendment protected expressive activity as described above.

**SECOND  
CAUSE OF ACTION**

48. The defendants can not condition the issuance of a permit for the exercise of free speech on an applicant securing and paying for a liability insurance policy.

49. The defendants can not condition the issuance of a permit for the exercise of free speech on an applicant securing and/or paying for security for the event.

50. The conduct of the defendants as set forth above constitutes an infringement of plaintiffs' right to peacefully assemble as protected by the United States Constitution (first amendment) and the Utah Constitution. Art. 1, § 1.

51. The plaintiffs are entitled to equitable relief in the nature of a temporary restraining order, preliminary injunction and a permanent injunction against the defendants from restricting plaintiffs' right to peacefully assemble under the United States Constitution and the Utah Constitution as set forth herein.

52. The plaintiffs are entitled to equitable relief in the nature of a temporary restraining order, preliminary injunction and a permanent injunction against the defendants from requiring an insurance policy before allowing plaintiffs to engage in a first amendment protected expressive activity as described above.

### **IMMEDIATE INJUNCTIVE RELIEF**

53. The defendants' current, threatened, imminent, continuing and pending violations of plaintiffs' rights as described above are real and substantial.

54. Plaintiffs anticipate that there will be a significant number of protestors and demonstrators from their organization and from other organizations in Morgan, Utah on Saturday, November 28, 2009.

55. Planning for and staging large demonstrations and protests requires substantial coordination and organization. Plaintiffs need to know their rights immediately in order to orchestrate the protest and demonstration.

56. Harm will be suffered by plaintiffs in not being allowed to plan, organize, coordinate, etc. their activities, demonstrations, protests, etc.

57. Plaintiffs BECKHAM and HATFIELD are fearful that if they attend and participate in the events in Morgan, Utah on Saturday, November 28, 2009 thus exercise their first amendment rights to free expression and peaceful assembly that they will be arrested and/or criminally charged. That fear is real and has a chilling effect on their rights.

58. Harm will be suffered by plaintiffs in not being allowed to engage in the expressive and political activity as described above, peacefully assembling, parading, circulating petitions, carrying signs, gathering signatures, engaging in conversation and discussions, demonstrating, picketing, leafleting, etc.

59. The harm being suffered and that will be suffered by plaintiffs is immediate and irreparable in nature. That harm justifies and warrants the issuance of a temporary restraining order, a preliminary injunction against defendants and allowing plaintiffs to engage in the expressive and political activity as described above.

#### **ATTORNEY FEES and COURT COSTS**

60. Plaintiffs have incurred attorney fees and court costs in pursuit of this matter.

61. Plaintiffs will incur additional attorney fees and court costs in pursuit of this matter.

62. Plaintiffs are entitled to and seek reimbursement of their attorney fees and court costs pursuant to 42 U.S.C. § 1983 and § 1988.

#### **RELIEF**

WHEREFORE, plaintiffs demand the following relief:

1. For a preliminary injunction allowing plaintiffs to engage in the expressive and political activity as described above in the public right-of-way and on public sidewalks of Morgan, Utah on Saturday, November 28, 2009 without securing a million dollar insurance policy and without having to provide security for their event.

2. For a permanent injunction allowing plaintiffs to engage in the expressive and political activities such as described above on public sidewalks and in the state right-of-ways without securing a million dollar insurance policy and without having to provide security for their event.

3. For declaratory relief that defendants' conduct as described above in requiring the securing of a million dollar insurance policy and providing their own law enforcement security for a free speech activity violates the constitutional rights of the plaintiffs as protected by the Utah and United States Constitutions.

4. Plaintiffs request no money damages at this time.

5. For an award of attorney fees and court costs under 42 U.S.C. § 1983 and § 1988.

6. For such other and further relief as the court deems just and proper in the premises.

DATED this 21<sup>st</sup> day of OCTOBER 2009.

UTAH LEGAL CLINIC  
Attorney for Plaintiffs

*/s/ Brian M. Barnard*

by \_\_\_\_\_  
BRIAN M. BARNARD

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