

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENISE MILLER and JAMES THOMAS
BRYANT,

Plaintiffs,

v.

AMY McMILLAN, Individually and In Her
Official Capacity as Director of Genesee
County Parks; and GREG PARKS, Individually
and in His Official Capacity as Chief Ranger
of Genesee County Parks,

Defendants.

Hon.

Case No.

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**VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE,
AND OTHER RELIEF**

Plaintiffs Denise Miller and James Thomas Bryant, by their attorneys, bring this
Verified Complaint for Declaratory, Injunctive Relief and Other Relief against Defendants Amy
McMillan and Greg Parks for the reasons that follow:

INTRODUCTORY STATEMENT

1. At stake in this case is the fundamental right to engage in core political speech in public parks, which are traditional public forums that “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Hague v. C.I.O.*, 307 U.S. 496, 515-16 (1939).

2. Small groups of people wishing to exercise their free speech rights in a traditional public forum need not ask the government for permission to speak; consequently, courts have consistently struck down permit requirements for small groups as an unconstitutional prior restraint on speech. Further, the government bears a heavy burden when it attempts to limit First Amendment activity in a traditional public forum.

3. Despite these well-established principles, the Genesee County Parks Department will not allow Michigan residents to seek signatures on a petition in Linden County Park unless they first obtain a permit.

4. Moreover, when Plaintiff Denise Miller was finally granted a permit to petition earlier this month, she was told that the only place she could petition in the entire 135-acre Linden County Park was a very small, 3 by 3 foot area far removed from the park’s foot traffic. The parks department painted this square the color orange and ironically dubbed it the “Free Speech Area.”

5. Ms. Miller and a fellow petitioner, James Thomas Bryant, bring this action against Amy McMillan, the Genesee County Parks Director, and Greg Parks, Chief Ranger of the Genesee County Parks, to vindicate their free speech rights under the First Amendment and 42 U.S.C. § 1983. Among the relief they seek is a declaration that their free speech rights are

being violated and a temporary, preliminary and permanent injunction allowing them to petition in areas of the park outside of the orange square without a permit.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff Denise Miller is a resident of the City of Linden in Genesee County, which falls within the Eastern District of Michigan.

7. Plaintiff James Thomas Bryant is a resident of the City of Davison in Genesee County, which falls within the Eastern District of Michigan.

8. Defendant Amy McMillan is sued in her individual capacity and in her official capacity as Director of Genesee County Parks. Upon information and belief, she resides within the Eastern District of Michigan.

9. Defendant Greg Parks is sued in his individual capacity and in his official capacity as Chief Ranger of Genesee County Parks. Upon information and belief, he resides within the Eastern District of Michigan.

10. This Court has jurisdiction over this matter under 28 U.S.C. §§1331 and 1343, because federal questions are presented in this action under the First Amendment of the United States Constitution and 42 U.S.C. §1983.

11. Venue is proper under 28 U.S.C. §1391(b)(1) and (2) because this is a judicial district where either or both defendants reside and where a substantial part of the events or omissions giving rise to the claims occurred or will occur.

STATEMENT OF FACTS

12. Plaintiffs Denise Miller and James Thomas Bryant are volunteers for the Committee to Recall Governor Rick Snyder.

13. Angered by the recently enacted Emergency Manager Law and what they believe to be Snyder's attack on working people, Miller and Bryant have been collecting signatures on petitions to place the Snyder recall measure on the November 2011 ballot.

14. The petition effort started in mid-May and, in order to place a recall measure on the ballot, the campaign will need to collect more than 800,600 valid signatures of registered Michigan voters by mid-August.

15. There are hundreds of volunteer petitioners collecting signatures throughout the state.

16. Linden County Park is a public park run by the Genesee County Parks.

17. According to the Genesee County Parks website, Linden County Park is approximately 135 acres in size and offers a wide variety of recreational areas and facilities, including Clover Beach on Byram Lake, picnic areas, pavilions, hiking trails, ball fields and tennis courts. *See* <http://www.geneseecountyparks.org/pages/ParkDirectory>.

18. During the first week of June, Ms. Miller drove to Linden County Park in her hometown of Linden to collect petition signatures to recall Gov. Snyder.

19. Ms. Miller chose to petition in Linden County Park because she believes that there are hundreds of people who visit the park in the summer who are sympathetic to her cause and who would sign the petition.

20. Ms. Miller further believes that Linden County Park is a prime place to collect signatures in an efficient manner.

21. Ms. Miller sat with her petitions at a picnic table on the lawn near the stairway to the beach because there was significant foot traffic in that area.

22. She set up a poster board at the picnic table that said, “Sign Snyder Recall Petition.”

23. A park ranger approached Ms. Miller and told her that she must leave the park and that she could not collect petition signatures there.

24. When Ms. Miller questioned the ranger and said that she had a right to collect signatures in the park, the ranger said that he talked to his supervisor about the issue and that she had to leave.

25. The ranger never suggested that Ms. Miller could petition if she had a permit.

26. Over the course of the next few days, Ms. Miller called the Genesee County Parks office to find out why she could not petition in the park.

27. Eventually, she was told that it would be okay for her to petition, but only if she first obtained a permit.

28. She was further told that someone from the Genesee County Parks would mail her a permit form.

29. After more than a week of waiting for the permit, she called the Genesee County Parks office and was informed that they did not have a permit form yet and that they were still developing it.

30. After waiting several more days, Ms. Miller called the office again and spoke with a woman named Amy who promised to email the permit that Ms. Miller could use to indicate her preferred area for gathering signatures.

31. On June 20, 2011, more than two weeks after first trying to petition at the park, Ms. Miller received the permit application and filled it out, requesting permission to petition in

the same area where she was previously sitting, along the path near the stairs leading to the beach. She mailed it back immediately.

32. Finally, during the last week of June, Ms. Miller received her permit in the mail.

33. Accompanying the permit was a map that indicated the only place she would be allowed to petition in the park.

34. However, the designated petitioning spot was not near the pathway and stairs to the beach as she had requested.

35. Rather, the map designated in orange a so-called “Freedom of Speech Area” about 20 feet from the far corner of a parking lot where there was virtually no foot traffic. (See permit and map, attached as Exhibit A).

36. Park personnel had actually painted an approximately 3 x 3 foot orange square on the grass where Ms. Miller was required to stand if she wanted to petition. (See color photo of the orange square, attached as Exhibit B).

37. The permit said that “signs must be placed within 10 feet of your activity only.”

38. Other signs are routinely placed throughout the park that are more than 100 feet away from the activity the sign announces, including signs directing people to birthday parties, family reunions, wedding anniversaries, and other events in the park.

39. Ms. Miller’s permit said that she could only petition from July 1 to August 1, 2011 between the hours of 9 a.m. and 6 p.m.

40. The park is open from 8 a.m. to sunset, which is about 9 p.m. during the month of July in Linden.

41. There are many people in the park after 6 p.m. in the summer. Summer evenings in the park are a popular time and place to hike, relax, meet friends and play softball and other sports.

42. Ms. Miller called Amy to complain that the permit did not allow her to petition where she wanted to petition.

43. Near the end of June, the park's attorney called Ms. Miller and told her that she must petition from the spot designated on the map.

44. On July 2, 2011, Ms. Miller went to Linden County Park to petition, but it was raining so she parked her car in parking space near the center of the lot near the path going down to the beach.

45. She placed her "Sign Snyder Recall Petition" sign in her car window and started to read a book.

46. However, a park ranger approached her and told her that she had to take the sign out of her car window.

47. The park ranger told Ms. Miller that there was a spot in the park where she could petition that park personnel had painted on the grass the day before. The ranger showed her where the 3 by 3 foot orange square was painted past the far end of the parking lot.

48. The picnic tables that had previously been in the vicinity of the orange square had been removed and there was no place for Ms. Miller to sit.

49. Rather than petition in the rain where there were no people, Ms. Miller left the park.

50. On Sunday, July 3, 2011, Ms. Miller returned to the park from about 11 a.m. to 1:30 p.m. Although there were scores of people in the park for the holiday weekend, very few people came anywhere near her so-called “Freedom of Speech Area.”

51. One person, who was attending a family reunion down at the beach, noticed Ms. Miller’s sign from a distance and walked over to sign the petition. He told Ms. Miller that he could get his whole family to sign. However, the family did not come up the hill.

52. Had Ms. Miller not been tethered to the orange square, she would have walked with the man to his relatives while the man encouraged family members to sign.

53. Ms. Miller could have obtained many more additional petition signatures had she been able to sit near foot traffic or walk throughout the park with her sign and her petition.

54. Ms. Miller returned again to Linden County Park on July 4, 2011, for a few hours. Although there were hundreds of people in the park, Ms. Miller was not able to reach out to potential voters because very few people came near the so-called “Freedom of Speech Area.”

55. Ms. Miller has not been back to petition in Linden County Park because the designated area for petitioning is in a relatively isolated area and it is exceedingly difficult and inefficient to collect signatures from that spot.

56. There is nothing on the Genesee County Parks website about the need to obtain a permit as a condition of exercising one’s First Amendment right to engage in political petitioning in the park.

57. Upon information and belief, at the time a decision was made to restrict Ms. Miller to a “Free Speech Area,” the Genesee County Parks did not have any written rules about when permits for political petitioning were required, under what circumstances permits would be

granted, how soon a decision on whether to grant a permit would be made, and how to determine where a so-called “Free Speech Area” would be established.

58. Defendants McMillan and Parks were personally involved in the decision to require petitioners to obtain a permit before petitioning.

59. Defendants McMillan and Parks were personally involved in the decision to create and enforce the so-called “Free Speech Area” and to bar Ms. Miller from petitioning outside the area.

60. It is now the practice, policy and/or custom of the Genesee County Parks to require petitioners to obtain a permit before petitioning.

61. It is now the practice, policy and/or custom of the Genesee County Parks to establish a “Free Speech Area” and to bar petitioners from petitioning outside the area.

62. Defendant McMillan, as Director of the Genesee County Parks, is the final decision-maker with respect to the rules regarding petitioning within Genesee County Parks.

63. Defendant Parks, as Chief Ranger for the Genesee County Parks, is responsible for overseeing and supervising the enforcement of park rules, including the rule barring petitioning without a permit and the rule barring Ms. Miller from petitioning outside of the so-called “Free Speech Area.”

64. Ms. Miller wishes to return to the Linden County Park to exercise her right petition throughout the park in a polite and unobtrusive manner.

65. If this Court enjoined defendants from barring Ms. Miller from petitioning outside the so-called the designated “Freedom of Speech Area” in Linden County Park, Ms. Miller would immediately return to the park to collect petition signatures.

66. If this Court enjoined defendants from enforcing the permit requirement for petitioning, Ms. Miller would return to Linden County Park to petition without a permit after her current permit expires on August 1.

67. If this Court enjoined defendants from enforcing a permit requirement limiting petitioning to 6 p.m., Ms. Miller would return to Linden County Park to petition in the evening between 6 p.m. and sunset.

68. James Thomas Bryant is the volunteer regional coordinator of the effort to collect signatures on Snyder recall petitions.

69. Mr. Bryant would like to petition in the Linden County Park because there are hundreds of voters who visit the park who are sympathetic to his cause.

70. Mr. Bryant would like to exercise his right to petition throughout the Linden County Park in a polite and unobtrusive manner.

71. However, because the 3 x 3 foot "Freedom of Speech Area" designated by the Linden County Parks is so small and removed from the people who visit the park, Mr. Bryant has decided not to petition in the park.

72. Mr. Bryant also believes that he should not have to go through the time consuming process of applying for and waiting to receive a permit in order to exercise his fundamental right to petition in a traditional public forum such as a public park.

73. If this Court holds that Mr. Bryant need not apply for a permit to exercise his right to petition in Linden County Park, Mr. Bryant will petition in the park.

74. If this Court holds that limiting petitioning activity in Linden County Park to the designated 3 x 3 foot square is an unconstitutional restriction on free speech, Mr. Bryant will petition in the park.

75. There is no adequate remedy at law.

CAUSE OF ACTION:
FIRST AND FOURTEENTH AMENDMENTS AND 42 U.S.C. § 1983

76. Plaintiffs re-allege and incorporate by reference the allegations contained in the previous paragraphs as if fully set forth herein.

77. At all relevant times, defendants were, are, and will be acting under the color of state law.

78. Defendants violated and are violating plaintiffs' First Amendment rights by requiring them to seek a permit before petitioning in Linden County Park.

79. Defendants violated and are violating plaintiffs' First Amendment rights by barring them from petitioning outside the designated 3 x 3 foot orange square.

80. Defendants violated and are violating plaintiffs' First Amendment rights by barring them from petitioning past 6 p.m. in the summer when Linden County Park is open until approximately 9 p.m.

81. Defendants violated and are violating plaintiffs' First Amendment and Fourteenth Amendment rights by not having definitive, objective standards for determining when permits for the exercise of First Amendment rights are required, under what circumstances permits are granted, how soon a decision on whether to grant a permit is made, and where a person may petition.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that plaintiffs' constitutional rights have been and are being violated;
2. Declare that defendants' permit requirement for petitioning in the Genesee County Parks is unconstitutional;

3. Declare that defendants' requirement that plaintiffs are barred from petitioning anyplace in Linden County Park other than the designated 3 x 3 foot orange square is unconstitutional;
4. Declare the defendants' prohibition on petitioning after 6 p.m. when the park is open until sunset is unconstitutional;
5. Grant a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants from requiring that plaintiffs obtain a permit before petitioning in the Genesee County Parks;
6. Grant a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants from barring plaintiffs from petitioning outside the 3 x 3 foot orange square in Linden County Park;
7. Grant a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants from barring plaintiffs from petitioning past 6 p.m. in the summertime;
8. Award plaintiffs nominal and compensatory damages;
9. Award plaintiffs reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
10. Grant any other relief the Court deems appropriate.

Respectfully submitted,

s/Michael J. Steinberg

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Counsel for Plaintiffs

Dated: July 18, 2011

DECLARATION OF DENISE MILLER

I, Denise Miller, resident of Linden, Michigan, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the factual allegations concerning me in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.


Dated: 7-15-2011

Denise M. Miller
Denise Miller

DECLARATION OF JAMES THOMAS BRYANT

I, James Thomas Bryant, resident of Davison, Michigan, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the factual allegations concerning me in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Dated: 7-15-11


James Thomas Bryant