

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

LIONEL AND TAMMY ALFORD, as
co-trustees of the LIONEL D. ALFORD, JR.
AND TAMMY NIX ALFORD
REVOCABLE TRUST,

Plaintiffs,

Case No.:

v.

WALTON COUNTY, a political
subdivision of the State of Florida,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Lionel and Tammy Alford, as co-trustees and beneficiaries of the Lionel D. Alford, Jr. and Tammy Nix Alford Revocable Trust (collectively “Plaintiffs”), file this Complaint against Walton County. In support, Plaintiffs allege:

Parties

1. Plaintiffs are domiciled in the State of Kansas and are co-trustees and beneficiaries of the Lionel D. Alford, Jr. and Tammy Nix Alford Revocable Trust (“Trust”). The Trust owns beachfront property in Walton County, Florida. Specifically located at 20 Sandy Beach Road, Miramar Beach, Florida 32550.

2. Defendant, Walton County (the “County”) is a citizen of the State of Florida, acting through its Board of County Commissioners (“Board”).

Jurisdiction

3. This Court has jurisdiction under 28 U.S.C. § 1331 because Plaintiffs raise questions under the U.S. Constitution.

4. This Court has jurisdiction under 28 U.S.C. § 1367 over the supplemental claims raised under Florida law.

5. The Court has jurisdiction under 28 U.S.C. § 1332 because Plaintiffs (citizens of Kansas) and the County (a citizen of Florida) are completely diverse from one another and the amount in controversy (the value of Plaintiffs’ property) exceeds \$75,000.

Venue

6. The U.S. District Court for the Northern District of Florida is the appropriate venue because the Defendant resides in this District, 28 U.S.C. § 1391(b)(1), and a substantial part of the events or omissions giving rise to the claim occurred within this District, *id.* § 1391(b)(2). Moreover, according to the Local Rules of the Northern District, the Pensacola Division is the appropriate venue because the cause of action arises in Walton County, Florida.

General Allegations

7. On June 14, 2016, the Board, through legislative action, amended the Walton County Waterways and Beach Ordinance (“Amended Ordinance”).

8. The Amended Ordinance requires a county permit “to leave an item of personal property on the beach between one hour after dusk and one hour after sunrise.” Walton County, Fla., Code § 22-54 (2)(a) (2016).

9. The Amended Ordinance completely prohibits, without exception, the issuance of such county permit for “[o]bstructions, including, but not limited to ropes, chains, signs, or fences.” *Id.* § 22-52 (2)(a)(3).

10. The Amended Ordinance provides that “[i]t 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.” *Id.* § 22-55.

11. The Amended Ordinance defines the term “Beach” as “the soft sandy portion of land lying seaward of the seawall or the line of permanent dune vegetation.” *Id.* § 22-02.

12. The Board declared that “obstructions on the beach, particularly fences, are a safety hazard for residents and visitors,” and that it enacted the provision prohibiting signs, among other things, for the purpose of “promoting the

health, safety, welfare and quality of life of the people.” Walton County, Fla., Ordinance 16-0809 (June 14, 2016).

13. On or about June 27, 2016, Plaintiffs received a Beach Code Enforcement Notice dated June 28, 2016, (“Notice”) from the Walton County Code Enforcement Officer.

14. The Notice provides “[i]f by the date of this letter you have an obstruction on the beach, including but not limited to ropes chains, signs, or fences you will be in violation of Section 22-55 of the Beach Ordinance” and “if as of the date of this letter you have an obstruction on the beach, including but not limited to ropes, chains, signs, or fences that you leave on the beach between one hour after dusk and one hour after sunrise, you are in violation of Section 22-54(g) and Section 22-55 of the Beach Activities Ordinance.”

15. The Notice additionally states that the failure to correct violations under Section 22-54(g) or 22-55 of the Beach Activities Ordinances by July 15, 2016 will result in a citation and the imposition of a civil penalty of up to \$500.00 per violation.

16. Plaintiffs own and use private property in the area the Amended Ordinance defines as “Beach.”

17. Plaintiffs have placed, and intend to continue to place, signs on the portion of the “Beach” that they own to warn against or discourage trespass on their private property.

18. In addition, as part of Plaintiffs’ use of their private property, Plaintiffs have placed and intend to continue to place other signs on the portion of their private property defined by the Amended Ordinance as “Beach.” Such signs either have in the past or may in the future include signs of a religious character, such as signs shaped like the Christian cross, and signs of a political nature, such as signs supporting or opposing political candidates.

19. Plaintiffs also intend to construct a fence around the perimeter of their privately-owned property, including the portion of their privately-owned property defined by the Amended Ordinance as “Beach.”

20. Finally, should the need arise, Plaintiffs may erect a sign on the “Beach” portion of their privately-owned property including the words “Bad Dog.”

21. On its face, the Amended Ordinance prohibits obstructions on the beach because such items purportedly create safety hazards for residents of and visitors to Walton County. However, signs, crosses, or fences either have been or will be placed entirely on Plaintiffs’ privately-owned property. Therefore, it is impossible for such signs, crosses, or fences to create a “safety hazard” for any

residents of or visitors to Walton County - unless, of course, such residents or visitors are trespassing on Plaintiffs' privately-owned property.

Count I – Violation of First Amendment Rights

22. Plaintiffs re-allege paragraphs 1 through 21.

23. The First Amendment to the U.S. Constitution, as applicable to the County through the Fourteenth Amendment to the U.S. Constitution, prohibits the enactment and application of laws “abridging the freedom of speech,” or “prohibiting the free exercise” of religion.

24. The Amended Ordinance unconstitutionally burdens speech, including but not limited to political and religious speech. On its face, and as-applied to the Plaintiffs, the Amended Ordinance illegally prohibits the placement of any and all signs, including no trespassing signs, political signs or religious signs on private property, including private property the Plaintiffs own and enjoy.

25. The Amended Ordinance does not leave open ample, satisfactory alternative channels of communication.

26. The Amended Ordinance neither directly furthers a legitimate government interest, nor is it narrowly tailored to further its ostensible purpose. As such, the Amended Ordinance as-applied violates Plaintiffs' rights protected by the

First Amendment to the U.S. Constitution as-applied to the states through the Fourteenth Amendment thereto.

27. As such, on its face and as-applied to Plaintiffs, the County's Amended Ordinance violates the Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution. The Court should enjoin the County from enforcing the Amended Ordinance.

Count II – Violation of Substantive Due Process Rights

28. Plaintiffs re-allege all the previous paragraphs.

29. The Fifth Amendment to the U.S. Constitution, as applicable to the County through the Fourteenth Amendment to the U.S. Constitution prohibits the County from depriving any person of "life, liberty, or property, without due process of law" – both procedural and substantive due process of law.

30. On its face, and as-applied to the Plaintiffs, the Board's legislative act of amending the Walton County Waterways and Beach Ordinance fails to afford substantive due process.

31. The Amended Ordinance's blanket prohibitions deprive Plaintiffs of their political speech and religious speech rights without any legitimate public purpose.

32. The blanket prohibitions also place an inordinate burden on the Plaintiffs' property rights and interfere with essential sticks in the Plaintiffs' bundle of real property rights. The blanket prohibitions deprive Plaintiffs of their right to exclude others from entering their private property as well as their right to privacy by prohibiting the use of ropes, chains, fences, "No Trespassing" signs, and the like to secure their private property.

33. The Amended Ordinance remains untethered from a legitimate government purpose. In adopting the Amended Ordinance, the County offers no elucidation of the harm it seeks to remedy - ostensibly "obstructions" which create safety hazards. However, signs, ropes, chains and fences located entirely on private beachfront property are not safety hazards. The County cannot explain how this supposed harm could occur, or how it is remedied by the Amended Ordinance. Instead, the County's Amended Ordinance is motivated by a willful and deliberate attempt to prevent private beach-front property owners from excluding the general public from their private property.

34. In effect, the Amended Ordinance converts Plaintiffs' private property into property freely accessible by the general public, thereby decreasing the Plaintiffs' property value by more than \$75,000.

35. Therefore, on its face and as-applied to Plaintiffs, the County's Amended Ordinance violates the Plaintiffs' rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. The Court should enjoin the County from enforcing the Amended Ordinance.

Count III – Conflict with State Statutes

36. Plaintiffs re-allege all the previous paragraphs.

37. Section 810.11 of the Florida Statutes specifically contemplates the posting of signs that include the words “no trespassing” to protect landowners from trespass and unauthorized entry under sections 810.09 and 810.12 of the Florida Statutes. *See also* § 479.16(11), Fla. Stat. (exempting for advertising permit requirements “[s]igns erected upon property warning the public against . . . trespassing”).

38. Section 767.04 of the Florida Statutes requires that dog owners place on their property “a sign easily readable” and “including the words ‘Bad Dog’” to avoid liability for “persons bitten” by their dog.

39. Sections 125.0102 and 166.0425 of the Florida Statutes contemplate local governments passing sign ordinances, but specifically provide that “such ordinances shall not conflict with any applicable state or federal laws.”

40. The County's Amended Ordinance conflicts with sections 810.11, 767.04, 125.0102, and 166.0425 of the Florida Statutes. The Court should declare the County's Amended Ordinance invalid.

Relief Requested

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the County's Amended Ordinance violates, on its face, the First, Fifth, and Fourteenth Amendments to the U.S. Constitution;

B. Declare that the County's Amended Ordinance violates, as-applied to the Plaintiffs, the Plaintiffs' rights under the First, Fifth, and Fourteenth Amendments to the U.S. Constitution;

C. Declare that the County's Amended Ordinance is invalid because it conflicts with sections 810.11, 767.04, 125.0102, and 166.0425 of the Florida Statutes;

D. Enjoin the County from enforcing the Amended Ordinance; and

D. Grant such other relief as the Court may deem proper.

Respectfully submitted by:

/s/ Mohammad O. Jazil

Mohammad O. Jazil

Fla. Bar No. 72556

Douglas M. Smith

Fla. Bar No. 12809

H. French Brown, IV

Fla. Bar No. 40747

HOPPING GREEN & SAMS, P.A.

119 South Monroe St., Suite 300

Tallahassee, FL 32301-1529

(850) 222-7500 / (850) 224-8551 (Fax)

dougs@hgslaw.com

mohammadj@hgslaw.com

frenchb@hgslaw.com

Dated: July 15, 2016

Attorneys for Plaintiffs