

PLAINTIFF CLAIMS SUBMISSION

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First Amendment Rights Preservation Society, Inc. (PLAINTIFF) , et al

v.

City of Santa Cruz; Santa Cruz Police Department (DEFENDANT)
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Purpose

This is formal notification to the City of Santa Cruz and the Santa Cruz Police Department that establishes claims against both entities as they relate to a December 11, 2021, street protest on Church Street, in front of the Santa Cruz Public Library, by members of the First Amendment Rights Preservation Society, Inc.

Case Background [descriptions, analyses, multimedia, crowdfunding]

www.farps.org/santacruz

Date of Event

December 11, 2020

Additional Notifications to Individuals Regarding Possible Civil and Criminal Claims

- (1) [Civil] Mr. Justin Cummings, [Former] Mayor of Santa Cruz, California
- (2) [Civil, Criminal] Mr. Andrew Mills, [Current] Chief of Police, Santa Cruz Police Department

Preservation and Non-Tampering of Evidence

DEFENDANT is responsible for preserving and not tampering with any and all materials that may potentially be used as evidence in the PLAINTIFF case. This includes, but is not limited to, emails, police dispatch calls, citations and arrest records, officer body cam footage, cost of damages related to protests, eyewitness statements, photographs and videos as they relate to Black Lives Matter protests and mural from June 1, 2020 to December 11, 2020, and the Free Speech Project / Free Speech Mural protest from September 15, 2020 to December 31, 2020.

PLAINTIFF Right to Sue

Under 42 U.S. Code § 1983, PLAINTIFF may file a civil action for the deprivation of PLAINTIFF rights. The laws states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

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Basis of Claims: Recognition of Government Speech Rights and Violations on the Restraints on Government Speech (*Rosenberger v. Rector, Rust v. Sullivan, Board of Regents of Univ. of Wis. System v. Southworth*); 1st Amendment (Free Speech Clause); 14th Amendment (Equal Protections Clause)

1. DEFENDANT has established a permanent, Black Lives Matter street mural (monument) under its rights to government speech granted under the protections of the Supreme Court decisions *Rosenberger v. Rector and Visitors of University of Virginia (1995)* and *Rust v. Sullivan (1991)*.

A government entity "is entitled to say what it wishes," *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833, and to select the views that it wants to express, see, e.g., *Rust v. Sullivan*, 500 U. S. 173, 194.

2. Nevertheless, government speech is conditioned by restraints established under *Board of Regents of University, Wisconsin System v. Southworth (2000)* to be accountable to its constituency and to adhere to limitations in its advocacy:

"This does not mean that there are no restraints on government speech. For example, government speech must comport with the Establishment Clause. In addition, public officials' involvement in advocacy may be limited by law, regulation, or practice; and a government entity is ultimately "accountable to the electorate and the political process for its advocacy," *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U. S. 217, 235. Pp. 4-6.

PLAINTIFF Claim(s) - General

[1] PLAINTIFF challenges the right of the DEFENDANT to exercise its government speech rights in the case of granting a permanent encroachment permit to a third-party for the establishment of the **Black Lives Matter** street mural on Center Street, Santa Cruz. The challenges are founded upon the claim that (a) the DEFENDANT violated the restraints placed on its rights to government speech established under the Supreme Court decision *Board of Regents of University, Wisconsin System v. Southworth (2000)* by suppressing the speech rights of a constituent segment (*unaccountable to the electorate*) while PLAINTIFF was attempting to deliver its counter-message to the community and (b) in surpassing the restraints in its advocacy of the Black Lives Matter movement by openly obstructing, delaying, misinforming, denigrating, smearing, restraining and terminating a Black Lives Matter counter-movement. In concurrence to its violation of the restraints placed on government speech, [2] DEFENDANT actions resulted in additional violations to PLAINTIFF's free speech rights under the Free Speech Clause of the 1st Amendment of the US Constitution and [3] the Equal Protections Clause of the 14th Amendment, causing significant harm to the PLAINTIFF's brand (***First Amendment Rights Preservation Society, Inc.***), counter-movement (***God Bless America***) and counter-message (***Free Speech***), that lent unfair advantages to the already predominant Black Lives Matter movement. Finally, [4] DEFENDANT knowingly perpetrated criminal acts against PLAINTIFF that (a) endangered the safety of PLAINTIFF and (b) restrained, confined and physically displaced the PLAINTIFF, against the PLAINTIFF's will, and through forceful means, in falsely arresting and imprisoning the PLAINTIFF.

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PLAINTIFF Claim(s) - Detail

PLAINTIFF specific claims in relation to the events leading up to, and culminating in, the events of December 11, 2020, against the DEFENDANT are as follows:

1. **[A] Impeding, denigrating and suppressing a constituent voice** - **[a]** after weeks of delay, misinformation and obstruction, refusing multiple requests to place the “God Bless America” mural project on the City Council agenda in order to allow PLAINTIFF a platform to advocate for the it; **[b]** failure to deliver any official decision to PLAINTIFF in relation to the requests for approval of an encroachment permit for the “God Bless America” street monument; **[c]** permanently terminating communications with the PLAINTIFF after November 4, 2020; **[d]** delivering a written statement (Public Works) to the PLAINTIFF, while copying various city employees, with the inference that the "God Bless America" mural project was not “legitimate”; **[e]** terminating the "Free Speech Mural" counter-movement protest by utilizing police officers to falsely restrain and arrest the organizer (December 11, 2020) while in the process of delivering a counter-message to the Black Lives Matter street mural monument on an adjacent street.

[B] Advocating for a particular movement while denying resources and enforcing laws unequally in order to impede, harm and extinguish a counter-movement. Refer to section 3.

Violation of the restraints on government speech established under *Board of Regents of University, Wisconsin System v. Southworth (2000)*: (a) not accountable to the electorate by using resources and processes of suppression to deny constituent voices an equal speech platform; (b) limits to public officials’ involvement in advocacy

2. Violating the free speech rights (**1st Amendment “Free Speech Clause” violation**) of a fearful and unheard constituent segment by disbanding the Free Speech Street Mural protest through the arrest and removal of the organizer while in the process of executing a Black Lives Matter counter-message (*Free Speech*), leading to the premature termination of the protest and causing excessive harm and damage to the PLAINTIFF brand, counter-movement and counter-message. In PLAINTIFF’s written notification to the Chief of Police seven (7) days ahead of the Free Speech Mural protest, PLAINTIFF specifically warns the Chief of Police that intervening in, obstructing or sanctioning the protest or its participants would be a violation of PLAINTIFF’s 1st Amendment rights (text immediately below). Additionally, when SCPD officers arrived at the scene to arrest the organizer, the organizer was clearly heard notifying the officers, multiple times, that they were violating the organizer’s 1st Amendment rights while being handcuffed and forced onto the rear trunk of a police cruiser. Each of these warnings, both written and verbal, were ignored and trivialized by the Santa Cruz Police Department.

“As officers sworn to protect the constitutional rights of the American citizenry, including the 1st Amendment rights to assembly and speech, your department is encouraged neither to interfere, obstruct nor sanction me in any way for exercising my speech and assembly rights. Any retaliatory steps taken by you, your officers or the city of Santa Cruz shall be deemed a violation of my 1st Amendment rights, and subject to the appropriate legal recourse.” [Letter to Chief of Police, Andrew Mills, dated December 2, 2020, from the Free Speech Mural protest organizer, delivered seven days before the event took place on December 11, 2021]

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3. Denying a constituent segment equal protections under the law (**14th Amendment's Equal Protections Clause violation**) in granting favorable treatment to the Black Lives Matter (**BLM**) protesters at the **Police Headquarters Protests** (June 3-4, 2020) by providing material support in the form of city resources, lax to no legal standards of law enforcement, and positive media propaganda (advocacy) that were denied or applied negatively (condemnation) to the PLAINTIFF leading up to and during the Free Speech Mural (**FSM**) protest:

3.1. Traffic Control and Safety

- 3.1.1. Police traffic control measures deployed to ensure protestors were safe from vehicular encounters (**BLM**)
- 3.1.2. Denying equivalent safety protections to Free Speech Mural protesters, even when said services were specifically requested to the Chief of Police seven days in advance of the protest, creating unsafe conditions and an at-risk environment that limited the effectiveness of (*degraded*) the counter-movement and the delivery of the counter-message to the community (**FSM**)

3.2. Unequal Applications of the Law

- 3.2.1. Neither intervening nor terminating two separate evenings of Black Lives Matter protests nor arresting or citing Black Lives Matter law-breakers who clearly and visibly established street barricades, lit fires on public streets, exceeded noise ordinance thresholds and vandalized public property at the police headquarters, in full view of officers at the scene (**BLM**)
- 3.2.2. Intervening to disrupt and prematurely terminate the Free Speech Mural protest by arresting the organizer while in the act of establishing the mural (the counter-message) with fellow protesters, even when DEFENDANT was notified one week before the event of its date, time, purpose, nature (non-permanent chalk) of the spray paint to be used, and request for traffic control support at the event (**FSM**)

3.3. Leveraging City Resources to Support / Promote One Movement (Advocacy) and Encumber / Defame a Counter-Movement (Condemnation)

- 3.3.1. Performing in the capacity as a Black Live Matter propaganda mouthpiece (Mayor, Chief of Police) through media conduits via verbal statements and prostrations to ensure that the movement, and the national organization behind the movement, were viewed favorably by the Santa Cruz community (**BLM**)
- 3.3.2. Damaging and defaming the public image of the PLAINTIFF brand (*First Amendment Rights Preservation Society, Inc.*), the PLAINTIFF counter-movement (*God Bless America*) and the PLAINTIFF counter-message (*Free Speech*) through the following disparate and retaliatory means:

3.3.2.1. Disparities in Public (Community) Claims and Direct Actions as They Pertain to Vandalism (Advocacy / Condemnation)

3.3.2.1.1. Providing cover (Chief of Police) to Black Lives Matter rioters, in order to nurture and preserve a positive community image of the Black Lives Matter movement as peaceful, by not intervening to make arrests when clearly visible lawbreaking was transpiring at the police station protests, and by using media conduits to minimize the damage done to public property by reporting them as “minor acts of vandalism,” when, in fact, the city incurred unspecified costs to repair and clean the resulting damage (broken windows, permanent graffiti on windows and sidewalks, street debris) **(BLM)**

3.3.2.1.2. Santa Cruz Police Department intervention at the active Free Speech Mural protest venue to arrest the PLAINTIFF on vandalism charges, with full knowledge as to the nature of the washable material being used to paint the mural, and in full view of pedestrians and on-lookers, causing irreparable harm and stigmatization to the PLAINTIFF’s brand (First Amendment Rights Preservation Society, Inc.), counter-movement (God Bless America) and counter-message (Free Speech), through its induced associations with illegal behavior as a destructive and violent movement requiring police intervention and arrest of perpetrators to effectively delegitimize a counter-movement to the advantage of the Black Lives Matter movement **(FSM)**

3.3.2.2. Disparities in Public (Community) Claims and Direct Actions as They Pertain to Citizen Safety (Advocacy / Condemnation)

3.3.2.2.1. At the May 30, 2020, Black Lives Matter day protest in Santa Cruz, delivering a public statement to the media (Chief of Police) that “SCPD is fully supportive of peaceful protests and we always keep them safe,” while deploying officers to all Black Lives Matter protests (permitted & non-permitted) and to the Black Lives Matter street mural painting event in order to reroute traffic to protect the well-being of the protesters **(BLM)**

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3.3.2.2.2. After direct notification to the Chief of Police via two separate transmissions (email, fax) by the FARPS organizer, seven (7) days in advance of the Free Speech Mural protest, with the date, time, purpose and paint material detailed, in addition to a specific request to provide traffic control services at the venue (“I shall assume SCPD will provide me with the necessary protections for my individual safety, including rerouting traffic away from this area during this one-hour event”), then failing to deliver any officers to the scene to “keep them safe” by refusing to grant city resources, except to arrest the organizer (FSM)

3.3.2.3. Openly Supporting One Movement While Publicly Denigrating and Delegitimizing the Counter-Movement (Public Works) (Advocacy / Condemnation) in Shared Email with Fellow City Employees

3.3.2.3.1. Granting approval (Public Works) to the Black Lives Matter mural design as an integral component of the city’s sign-off loop for all permanent encroachment permits (BLM)

3.3.2.3.2. Sharing and spreading (Public Works) sentiments (in a shared email response to the PLAINTIFF) with fellow city officials, some employed in departments outside of the Public Works sphere, that the **God Bless America** mural was not a “legitimate” project worthy of any city attention, even when no such decision had been made by the City Council (FSM)

3.3.2.4. Leveraging City Resources to Provide Aid and Counsel to Preserve and Enhance the Community Image of One Movement (Advocacy) While Utilizing a Combination of Information Barriers, Misinformation and Deflection to Delay, Discourage and Terminate a Counter-Movement (Condemnation)

3.3.2.4.1. Providing advice and counsel (Mayor) directly to Black Lives Matter protesters in order to nurture a positive community image of the organization as non-violent, while simultaneously pleading with the protesters to avoid violence and not to destroy city property (BLM)

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3.3.2.4.2. **[a]** After weeks of delay, misinformation and obstruction, refusing multiple requests to place the “God Bless America” mural project on the City Council agenda in order to allow PLAINTIFF a platform to advocate for the it; **[b]** failure to deliver any official decision to PLAINTIFF in relation to multiple requests for approval of an encroachment permit for the “God Bless America” street monument, thereby placing PLAINTIFF into a perpetual state of limbo and resource depletion; **[c]** permanently terminating communications with the PLAINTIFF after November 4, 2020; **[d]** Ignoring (Mayor) PLAINTIFF requests for permit information, then knowingly providing false and misleading information to PLAINTIFF to delay the acquisition of said information in order to discourage PLAINTIFF’s pursuit of the “mural project (FSM)

3.3.2.5. Deploying Visual Cues and Optics in a Public Forum to Enhance the Brand of One Movement (Advocacy) While Discrediting and Stigmatizing the Brand of a Counter-Movement (Condemnation)

3.3.2.5.1. Kneeling and posturing to Black Lives Matter protesters (Mayor, Chief of Police) during a May 30, 2020, BLM protest in downtown Santa Cruz, with the media photographing the staged moment (reaching a national audience), in a nod to the city’s submission and reverence to the Black Lives Matter movement and, by association, to Black Lives Matter, Inc. (BLM)

3.3.2.5.2. Sending multiple, simultaneous police cruisers and officers to the scene of the Free Speech Mural protest to arrest the PLAINTIFF, in front of public onlookers, then immediately removing PLAINTIFF from the venue without announcing charges, inquiring about the nature of the paint used to create the mural, or inquiring about the PLAINTIFF’s plans to wash off the mural at the termination of the protest, through a show of force, aggression, intimidation, derision and dissension against a Black Lives Matter counter-movement (FSM).

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- 3.4. **Leveraging City Resources to Provide Aid to Enhance the Message Delivery of One Movement (Advocacy) While Denying Resources to Encumber the Message Delivery of the Counter-Movement (Condemnation)**
 - 3.4.1. Delivering police resources in the form of traffic control to Black Lives Matter protests (permitted and illegal) and the Black Lives Matter mural painting event to ensure the safety of the participants in order to enable them to effectively deliver the Black Lives Matter message to the public from a secure platform.
 - 3.4.2. Denying police resources to the Free Speech Mural protest, even when they were specifically requested by the organizer to ensure the safety of its participants, introducing encumbrances to the street mural painters due to frequent and dangerous encounters with on-coming vehicles, significantly hampering their ability to properly execute the mural and deliver their message to the community due to the unsafe conditions of the speech platform.
4. **Criminal Claims Against the Santa Cruz Police Department and Chief of Police, Andrew Mills**
 - 4.1. Reckless Endangerment in the First Degree (CA Penal Code 53a-63) by the Chief of Police, Andrew Mills, in refusing to accede to two written requests (dated December 2, 2020; fax / email) by the PLAINTIFF to provide material support in the form of traffic control measures to ensure the safety of the protesters participating in the creation of the Free Speech Street mural on Church Street on December 11, 2020, thus, knowingly placing their lives at risk from multiple vehicle encounters, one of which was submitted in a police report to the Santa Cruz Police Department, that took place during the street mural painting phase of the protest.
 - 4.2. False Arrest and False Imprisonment (CA Penal Code 236PC) “with force” of the Free Speech Protest organizer on vandalism charges **[a]** when it was known by the Chief of Police, Andrew Mills, one week prior to the Free Speech Mural protest as to the nature of the washable, liquid chalk paint to be used in the mural and **[b]** none of the arresting officers on the scene of the protest asked any direct questions to the organizer, or to fellow street mural painters, about the nature of the paint and whether the protesters intended to clean off the street mural paint at the termination of the protest, either when at the protest venue or in the police station parking lot where the organizer had been transported and where the citation was issued. The arresting officers failed to allow the organizer to respond in any way of **[b.1]** the conditions established for the protest and the washable nature of the paint, **[b.2]** the notice delivered seven days earlier to the Chief of Police, Andrew Mills, of the planned street protest and the shutting down of city communications with the organizer, and **[b.3]** the plan to remove the mural from the street at the termination of the protest either through the forecasted and imminent rain or the use of a garden hose stored in the organizer’s nearby Toyota Tacoma truck if the rains did not arrive.