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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
JAN 07 2014  
at 11 o'clock and 20 min. A.M.  
SUE BEITIA, CLERK

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

STRATFORD GOODHUE and  
DOREEN GOODHUE,

Plaintiffs,

vs.

COUNTY OF MAUI, a municipal  
corporation; DOE OFFICER #1, Maui  
Police Department Officer, in his

CIV. NO. **CV14 00006ACK**  
[CIVIL RIGHTS ACTION] **KSC**

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
DAMAGES; SUMMONS IN A  
CIVIL CASE**

individual capacity; DOE OFFICER #2,  
Maui Police Department Officer, in his  
individual capacity, and DOES 3-30,

Defendants.

## COMPLAINT

COME NOW Plaintiffs **STRATFORD GOODHUE** and **DOREEN GOODHUE**, by and through the undersigned attorneys, and allege as follows:

### INTRODUCTION

1. This action is for damages and for declaratory and injunctive relief arising out of Defendants' violations of Plaintiffs' civil rights and civil liberties guaranteed to them by the First Amendment to the United States Constitution.

2. Pastor Goodhue is an ordained Christian Pastor. He and his wife, Doreen Goodhue, were offering a religious pamphlet to passers-by while standing on a public sidewalk near the entrance to the Maui Fair fairgrounds when officers of the Maui Police Department ordered them to cease their protected First Amendment activities and ejected them from a public sidewalk that was otherwise open to the public.

3. The Plaintiffs' First Amendment fundamental right to distribute religious literature on Maui County's public sidewalks and parks has been clear and firmly established for over seventy years based on decisions by the United

States Supreme Court that: (1) "Wherever the title of streets and parks may apply, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions"; and (2) the distribution of religious literature "occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits."

4. Consequently, Plaintiffs seek declaratory and injunctive relief, and damages, from Maui County and the two police officers who threatened them, for this violation of their classic right to "preach in the town square."

#### **JURISDICTION AND VENUE**

5. This action is brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988, to redress the deprivation, under color of law, of rights secured the by the United States Constitution.

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, since this case involves a civil action that is brought to redress a deprivation of a right secured by the Constitution of the United States.

7. This Court is authorized to order declaratory and injunctive relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

8. This Court has proper venue pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district and the events giving rise to these claims occurred in this district.

### **THE PARTIES**

#### **Plaintiffs**

9. At all times relevant to this action, Plaintiffs Stratford Goodhue and Doreen Goodhue resided within the County of Maui, State of Hawaii.

10. Stratford Goodhue (“Pastor Goodhue”) is an ordained Christian pastor. For the last few years, he and his wife, Doreen, have distributed pamphlets while standing on public property. The pamphlets consist of one piece of paper containing text that promotes Pastor Goodhue’s religious views.

11. Pastor and Mrs. Goodhue have specific concrete plans to distribute these pamphlets during upcoming Maui Friday Town Parties and at or near future Maui Fair events while standing on publically accessible areas including streets and sidewalks maintained by the County of Maui.

#### **Defendants**

12. Defendant COUNTY OF MAUI (“County”) is a political subdivision and municipal corporation within the State of Hawaii, and includes the Maui Police Department (“MPD”).

13. The violations of Plaintiffs' First Amendment rights, as set forth herein, were the result of employees and/or agents of Defendant County acting pursuant to the official policies and/or customs of the County, and/or because those actions have been approved, ratified, and/or enforced by persons and/or entities with decision-making authority. The County is sued both for damages to redress past violations of Pastor and Mrs. Goodhue's First Amendment rights and for prospective relief intended to prevent future violations of Plaintiffs' First Amendment rights.

14. Defendant MAUI POLICE DEPARTMENT ("MPD") DOE OFFICERS 1 and 2 are MPD Officers who participated in the violation of Plaintiffs' First Amendment rights, as set forth herein. On information and belief, MAUI POLICE DEPARTMENT DOE OFFICER #1 is named D. Veron ("Doe Officer #1"), is a Sergeant with the Maui Police Department, and is a citizen of the United States and a resident of Maui County. The name of MAUI POLICE DEPARTMENT DOE OFFICER #2 ("Doe Officer #2") is unknown at this time. Doe Officers #1 and #2 are sued in their individual capacities only. Plaintiff will seek leave of Court to amend this Complaint to add the full names of Doe Officers #1 and #2 once they become known.

15. Plaintiffs are unaware of the true names and capacities of Defendants DOES 3 THROUGH 30 and therefore sues said Defendants by such fictitious

names. Plaintiffs will amend this Complaint to allege their true names and capacities and thereon allege that each of the fictitiously named Defendants is responsible in his/her official and/or individual capacity for the occurrences herein alleged, and that Plaintiffs' damages, as herein alleged, were legally caused by their conduct. Plaintiffs have made good faith and diligent efforts to identify said Defendants, including interviewing individuals with knowledge of the claims herein.

16. At all relevant times and in all relevant respects, Defendants have acted under color of State law, and each Defendant is a "person" subject to suit within the meaning of 42 U.S.C. § 1983.

17. On information and belief, each of the Defendants performed, participated in, aided and/or abetted, and/or was deliberately indifferent to the acts averred herein and thereby proximately caused the injuries averred herein.

18. At all times relevant herein, all County officials, employees, and agents were acting pursuant to authority delegated or conferred by Defendant County and, in doing or failing to do the things complained of herein, were acting within the scope of that authority.

19. At all times relevant herein, Defendants and other MPD officers, employees, and agents were acting pursuant to the official policies and customs of

the County, which have been approved, ratified, and/or enforced by the persons and/or entities with final decision-making authority.

20. Defendant County has encouraged, tolerated, ratified, and been deliberately indifferent to a pattern, practice, and custom of threatening arrest and prosecution of those engaged in protected First Amendment activities under such circumstances as presented herein, and to the need for more or different training, supervision, investigation, or discipline in the areas of:

- a. The proper exercise of police powers, including improper threats of arrest;
- b. The right of individuals to engage in protected First Amendment activities without fear of harassment, detention, arrest and prosecution under such circumstances as presented herein; and

21. Specifically, as evidenced by constitutional violations by two MPD Officers (Doe Officer #1 and Doe Officer #2) at different times and at different places, Defendant County has a pattern, practice, and/or custom of violating the First Amendment rights of those who wish to exercise their First Amendment rights on public sidewalks in Maui County.

### **FACTUAL ALLEGATIONS**

22. For the past two years, Pastor Goodhue has been creating and distributing pamphlets that promote his religious views. He and Mrs. Goodhue

will often distribute the pamphlets while standing on public property, including sidewalks and streets that are maintained by the County.

23. Pastor and Mrs. Goodhue prefer to distribute their pamphlets in public areas with heavy foot traffic. This provides them with more opportunities to distribute the pamphlets.

24. The most successful distribution point for Pastor and Mrs. Goodhue has been the area adjacent to the War Memorial Complex during the annual Maui Fair.

25. The Maui Fair – an annual event that attracts approximately 90,000 visitors – is held in Wailuku at the War Memorial Complex, a public park that is owned and controlled by the County of Maui. The War Memorial Complex is bordered by Kaahumanu Avenue to the South and Kanaloa Avenue to the East. The Maui Fair is open to the general public, but the Maui Fair charges an admission fee of \$7 for visitors to enter into the fenced area that constitutes the Maui Fair fairgrounds. The entrance to the Maui Fair fairgrounds is located on Kanaloa Avenue.

26. Kaahumanu Avenue and Kanaloa Avenue are public roadways maintained by the County, and both avenues have public sidewalks that are maintained by the County. The sidewalk on the East side of Kanaloa Avenue is



located on a grassy area that is part of the War Memorial Complex, although it is located outside the fence that defines the perimeter of the Maui Fair fairgrounds.

27. In 2013, the Maui Fair was open to the public between October 3, 2013, and October 6, 2013. General public admission to the fenced Maui Fair fairgrounds was by ticket.

28. On October 4, 2013, Pastor and Mrs. Goodhue were distributing religious literature on the sidewalk and grassy area adjacent to Kanaloa Avenue, within the Maui County public park known as the War Memorial Complex. This location is approximately fifty meters from the fenced entrance to the Maui Fair fairgrounds. General public access to this location required neither a ticket nor a fee.

29. At no time relevant to this action did Pastor or Mrs. Goodhue enter the Maui Fair fairgrounds, which presumably would have required the purchase of an admission ticket; instead, they stood on and adjacent to the County sidewalk outside the Maui Fair fairgrounds and distributed pamphlets to pedestrians as they walked to and from the Maui Fair.

30. At no time relevant to this action did Pastor or Mrs. Goodhue block the sidewalk or the roadway, or cause any impediment whatsoever to pedestrian or vehicular traffic.

31. At no time relevant to this action did Pastor or Mrs. Goodhue create any disturbance or threat to the public peace.

32. At no time relevant to this action were Pastor or Mrs. Goodhue disruptive to the Maui Fair.

33. At all times relevant to this action, Pastor and Mrs. Goodhue distributed their religious pamphlets simply by holding them out for people to take. Pastor and Mrs. Goodhue did not engage the people who passed by, except to say things such as: "Have a good time at the Fair"; "Enjoy the Fair"; or "Have a good day at the Fair."

34. On October 4, 2013, while distributing pamphlets, Pastor and Mrs. Goodhue were approached by the Maui Fair Board President Avery Chumbley and told to leave the area. Mr. Chumbley told Pastor and Mrs. Goodhue that the Maui Fair had a Maui County permit giving it control of the entire area, including the sidewalk and grassy area outside the fenced Maui Fair fairgrounds where Plaintiffs were distributing religious literature.

35. In response to Mr. Chumbley's order that they leave the area, Pastor and Mrs. Goodhue moved to a different location where they continued to distribute their pamphlets. However, this location was less desirable because it had much less foot traffic.

36. On October 5, 2013, Pastor and Mrs. Goodhue returned to the sidewalk and grassy area adjacent to Kanaloa Avenue, on the Maui War Memorial Complex and near the Maui Fair fairgrounds. They distributed their pamphlets in the same manner as the day before, and were again approached by Mr. Chumbley and ordered to leave the area immediately. Mr. Chumbley said that Pastor and Mrs. Goodhue had two choices: leave or be arrested. Mr. Chumbley was very clear that he planned to call the police, and have Pastor and Mrs. Goodhue arrested, if they did not leave.

37. In response, Pastor Goodhue told Mr. Chumbley that they would not leave or cease distributing the pamphlets unless directed to do so by a police officer.

38. Mr. Chumbley spoke to the police, and approximately 15-20 minutes later, Doe Officer #1 (whose name, on information and belief, is Sergeant D. Veron) approached and spoke to Pastor and Mrs. Goodhue.

39. Doe Officer #1 told Pastor and Mrs. Goodhue that the Maui Fair had a permit for the entire area – including the public sidewalks, the street, and the park area outside the fenced Maui Fair grounds. Doe Officer #1 also stated that he had assisted in drafting the permit at issue, and the Maui Fair essentially “owned” the sidewalk because of the permit. Doe Officer #1 confirmed to Plaintiffs that Plaintiffs were not blocking the sidewalk, were not drawing a crowd, were not

impeding ingress or egress of pedestrians from the Fair, and were not threatening anyone with their leafleting. Nevertheless, Doe Officer #1 stated that, due to the Maui Fair's complaint about Plaintiffs' activities, Pastor and Mrs. Goodhue were ordered to leave immediately.

40. There was no question that this was a direct order from a police officer to leave the area immediately, and Pastor and Mrs. Goodhue understood this order to mean that if they did not leave immediately, they would be physically removed from the premises and/or arrested.

41. Pastor and Mrs. Goodhue and his wife felt nervous, worried, and threatened by Doe Officer #1's actions. They came to the fair to "do good" – to spread their religious beliefs – and instead were forced to leave a public sidewalk out of fear that they would be arrested otherwise.

42. Before Plaintiffs and Doe Officer #1 parted ways, Doe Officer #1 instructed Plaintiffs not to distribute pamphlets at the near corner of Kaahumanu Avenue and Kanaloa Avenue. Doe Officer #1 indicated that a Maui Police Department officer was stationed at the corner, and that this MPD Officer would likely instruct Plaintiffs to move if Plaintiffs attempted to distribute leaflets at that location.

43. Due to Doe Officer #1's orders, as aforesaid, Pastor and Mrs. Goodhue left the area and walked to the corner of Kaahumanu Avenue and

Kanaloa Avenue – the corner to which Doe Officer #1 had referred a moment earlier.

44. At that corner, Pastor and Mrs. Goodhue saw another MPD Officer, referred to in this Complaint as Doe Officer #2, who appeared to be controlling or monitoring the traffic signal. He appeared to have a device in his hand that was connected to the signal box. Plaintiffs believe that Doe Officer #2 was the MPD Officer to whom Doe Officer #1 was referring earlier (in ordering Plaintiffs not to distribute pamphlets at this second location).

45. Pastor Goodhue asked Doe Officer #2 if the order from Doe Officer #1 to leave the vicinity of the Maui Fair and cease distributing the religious pamphlets was legal. Doe Officer #2 replied that the order was legal because the Maui Fair had a permit for the area, and because people could consider the distribution of religious literature to be harassment.

46. Doe Officer #2 added that Pastor and Mrs. Goodhue also should not hand out pamphlets in front of the MPD police station located across the street from where Pastor Goodhue, his wife, and Doe Officer #2 were talking, because if someone complained, Pastor Goodhue and his wife could again be forced to leave or risk arrest. Consequently, Pastor and Mrs. Goodhue understood that they were now prohibited from distributing pamphlets at three separate locations: on the

sidewalk on Kanaloa Avenue; on the sidewalk at the corner of Kaahumanu Avenue and Kanaloa Avenue; and on the sidewalk in front of the MPD police station.

47. As a result of the Officers' actions and threats, Pastor and Mrs. Goodhue immediately ceased their distribution efforts and did not return to distribute his pamphlets during the final day of the Maui Fair. Pastor and Mrs. Goodhue had planned to distribute pamphlets for three additional hours that day, and for nine hours the following day. Instead, Pastor and Mrs. Goodhue were unable to distribute approximately 2,000 of their pamphlets.

48. As evidenced by the fact that two separate MPD officers gave Pastor and Mrs. Goodhue the same information at different times and at different places, Doe Officers #1 and #2 were acting in accordance with official Maui County policy and/or custom when they violated Pastor and Mrs. Goodhue's First Amendment rights by ordering them to stop distributing religious literature or risk arrest, as set forth above.

49. Pastor and Mrs. Goodhue now wish to distribute religious literature at upcoming Maui Friday Town Parties. These events take place on the first four Fridays of every month: Wailuku on the first Friday, Lahaina on the second, Makawao on the third, and Kihei on the fourth. On information and belief, the organizer(s) of these events has/have obtained permits from Defendant County to hold these events. The events are open to the public, promoted by the Maui

County Office of Economic Development, and take place in publically accessible areas that include streets, parks and sidewalks that are maintained by the County of Maui.

50. In addition, Pastor and Mrs. Goodhue wish to distribute religious literature on the Kanaloa Avenue sidewalk during future Maui Fair events.

51. Due to Defendants' statements and actions, Pastor and Mrs. Goodhue fear that they will be arrested if they attempt to distribute religious literature at the Maui Friday Town Parties and at future Maui Fair events.

#### **DECLARATORY AND INJUNCTIVE RELIEF**

52. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with the United States Constitution for at least the reasons set forth herein. Plaintiffs are therefore entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

53. Specifically, Plaintiffs seek a declaration that the conduct of Doe Officer #1 and Doe Officer #2 was unconstitutional. Plaintiffs also seek a declaration that Defendant County's policy, practice, and/or custom of ejecting law-abiding individuals from public forums is likewise unconstitutional.

54. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe upon Plaintiffs' constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires preliminary and permanent injunctive relief.

**CLAIM FOR RELIEF**

**VIOLATION OF THE FIRST AMENDMENT OF THE UNITED STATES  
CONSTITUTION, ACTIONABLE PURSUANT TO 42 U.S.C. § 1983  
(Freedom of Speech, Assembly, and Religious Exercise)  
(Plaintiffs Against Defendant County and Against Defendant Doe Officer #1  
and Defendant Doe Officer #2 in Their Individual Capacities)**

55. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 54, above, as if fully set forth herein.

56. The rights of free speech, assembly, and religious exercise are clearly established rights protected by the First Amendment to the United States Constitution.

57. The issuance of a permit does not grant the permittee unfettered discretion to exclude individuals or groups from a public forum located within the area subject to the permit. *Gathright v. City of Portland, Or.*, 439 F.3d 573, 577 (9th Cir. 2006).



58. The fact that a permit has been issued for use of a particular public space does not, standing alone, provide a legal basis for restricting First Amendment activities in that public space.

59. On information and belief, and based on the aforementioned allegations, Defendant Maui County has and enforces a policy and/or custom of interfering with speech and/or conduct protected by the First Amendment to the United States Constitution by allowing permittees unfettered discretion to exclude private citizens from public forums on any (or no) basis.

60. By preventing Pastor and Mrs. Goodhue from distributing pamphlets in a traditional public forum, Defendants Maui County, Doe Officer #1, and Doe Officer #2 have knowingly and unlawfully deprived Pastor and Mrs. Goodhue of the ability to exercise their clearly established First Amendment rights.

61. The actions of Defendants Maui County, Doe Officer #1, and Doe Officer #2, complained of herein, were directed toward intimidating Pastor and Mrs. Goodhue and chilling the exercise of their protected expressive rights by, among other means, silencing or diluting their message and by deterring their rights to speak, to assemble, and to exercise religion as guaranteed by the First Amendment to the United States Constitution.

62. As a direct and proximate result of the violations of Pastor and Mrs. Goodhue's constitutional rights by Defendants Maui County, Doe Officer #1, and

Doe Officer #2, as set forth herein, Pastor and Mrs. Goodhue have suffered humiliation, embarrassment, inconvenience, mental and emotional distress, litigation expenses and other compensatory damages, in an amount to be determined by the Court.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

- A. Assume jurisdiction over this action;
- B. Issue a declaratory judgment stating that Defendants' actions violated Pastor and Mrs. Goodhue's right to distribute religious literature on public sidewalks and in public forums as guaranteed by the First Amendment to the United States Constitution;
- C. Issue a preliminary and permanent injunction enjoining Defendants (and their divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendants or pursuant to Defendants' authority) from subjecting Plaintiffs to the customs, policies, practices, rules, regulations, acts and omissions set forth in this Complaint;
- D. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful customs, policies, practices, rules, regulations, acts and omissions complained of herein no longer exist and will not recur;

E. Award reasonable attorneys' fees, costs and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. § 1988 and other applicable laws;

F. Award actual and nominal damages to Plaintiffs for the violations of clearly established law set forth herein; and

G. Order such other relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, January 7, 2014.



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