

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL DUMIAK and CHRISTOPHER)
SIMMONS,)
)
Plaintiffs,)

v.)

No. 19-cv-5604

VILLAGE OF DOWNERS GROVE,)
JEFFREY GIERMANN, ROBERT JACOBS,)
JAY JOHNSON, KENNETH LISTER,)
ALESSIA MAROCCO, and JOSHUA)
NELSON, Downers Grove Police Officers in)
their individual and official capacities;)
BRENDAN KELLY, Acting Director of the)
Illinois State Police, in his official capacity;)
and ROBERT BERLIN, DuPage County)
State's Attorney, in his official capacity,)

Honorable Robert W. Gettleman

Defendants.)

**FINAL ORDER ENTERING
PERMANENT INJUNCTION PURSUANT TO SETTLEMENT**

Plaintiffs Michael Dumiak and Christopher Simmons (“Plaintiffs”), and Defendants, Brendan Kelly, Director of the Illinois State Police, in his official capacity; and Robert Berlin, DuPage County State's Attorney, in his official capacity (“Defendants”), have agreed to resolve the above-captioned litigation (the “Litigation”) and any potential claim by Plaintiffs pursuant to 42 U.S.C. § 1988 for attorneys’ fees and costs incurred to date in connection with the Litigation.

Pursuant to that agreement, Plaintiffs and Defendants (collectively “the Parties”) have filed an Agreed Motion for Entry of a Final Order and Permanent Injunction. Based on the agreement of the parties and lack of opposition to the proposed injunction and its terms, the Court has determined that entry of a Final Order and Permanent injunction (the “Final Order”) is proper.

Findings of Facts and Conclusions of Law:

1. The Parties understand and agree that the Court has jurisdiction over this matter and that venue is proper.

2. Defendants Kelly and Berlin have agreed to waive the entry of findings of fact and conclusions of law for the purposes of this Order pursuant to Rules 52 and 65 of the Federal Rules of Civil Procedure.

3. Plaintiffs also have agreed to waive the entry of findings of fact, and further have agreed to waive any specific finding of liability against the Defendants.

4. Plaintiffs do seek a specific conclusion of law that 625 ILCS 5/11-1006(c), as amended by P.A. 88-589, §10, eff. August 14, 1994, is unconstitutional under the First Amendment. Defendants do not oppose such a finding, though they have not expressly stipulated to it.

5. Based on the lack of opposition, and for the reasons explained in the Court's previous memorandum and opinion dated July 29, 2020, see ECF #52 at 4, the Court agrees such a conclusion of law is appropriate. The Court therefore concludes, as a matter of law, that 625 ILCS 5/11-1006(c) is a content-based restriction on the freedom of speech that is not justified by any compelling interest and that the provision violates the First Amendment and is unconstitutional on its face under clearly established law, specifically, the controlling Supreme Court decision of Reed v. Town of Gilbert, 576 U.S. 155 (2015), and the controlling Seventh Circuit decision of Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015).

Accordingly, it is ORDERD:

1. Defendant Kelly, his successors, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of the Illinois State Police, are permanently

enjoined from enforcing 625 ILCS 5/11-1006(c), as amended by P.A. 88-589, §10, eff. August 14, 1994.

2. Defendant Berlin, his successors, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of the DuPage County State's Attorney's Office, are permanently enjoined from enforcing 625 ILCS 5/11-1006(c), as amended by P.A. 88-589, §10, eff. August 14, 1994.

3. Defendants have agreed not to appeal or otherwise attack the validity or enforceability of this Final Order and the permanent injunction, and have agreed that it is binding and enforceable as to each Defendant; any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of each Defendant; and all those acting in concert or participation with each Defendant. See Fed. R. Civ. 65(d)(2).

4. Any claim for attorneys' fees and costs related to this Litigation and incurred through the date of entry of this Final Order has been resolved between the parties by agreement that the Defendants will pay a portion of Plaintiffs' attorneys' fees in an amount to be agreed to by the parties, and therefore the issue is hereby disposed of by this Order. Nothing herein shall be construed to prohibit Plaintiffs from seeking its attorneys' fees and costs in this Court in connection with any actions taken to enforce this Final Order.

5. Plaintiffs' remaining claims related to any other provision of 625 ILCS 5/11-1006, and all other claims for relief not addressed herein, are hereby dismissed with prejudice.

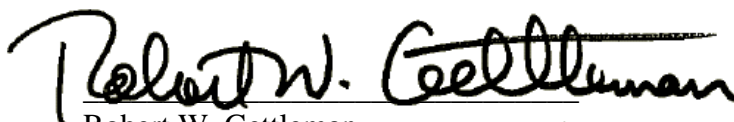
6. This matter is dismissed without prejudice and with leave to reinstate within one year from the date of this Order. Such dismissal without prejudice shall automatically convert to a dismissal with prejudice and without leave to reinstate upon payment pursuant to Defendants'

agreement to pay a portion of Plaintiffs' attorneys' fees or within one year from the date of this Order, whichever is earlier.

7. Plaintiffs are authorized to seek to enforce the terms of this Final Order in this Court.

It is so Ordered.

Dated: January 11, 2021


Robert W. Gettleman
U.S. District Judge

The foregoing Final Order and Permanent Injunction has been agreed to and consented to by all the parties.

Michael Dumiak and Christopher Simmons

By: /s/ Christopher L. Gerardi Jr.
One of their Attorneys

Everett Cygal
Christopher Gerardi Jr.
Schiff Hardin, LLP
233 S. Wacker Dr.,
Suite 7100
Chicago, IL 60606
(312) 258-5500
ecygal@schiffhardin.com
cgerardi@schiffhardin.com

Rebecca K. Glenberg
Juan Caballero-Nieves
Roger Baldwin
Foundation of ACLU, Inc.
150 N. Michigan Ave.
Suite 600,
Chicago, IL 60601
(312) 201-9740
rglenberg@aclu-il.org
jcaballero@aclu-il.org

Diane O'Connell
Arturo Hernandez
Law Project of the Chicago
Coalition for the Homeless
70 E. Lake St.,
Suite 720
Chicago, IL 60601
(312) 641-4140
diane@chicagohomeless.org
arturo@chicagohomeless.org

Counsel for Plaintiffs

Brendan Kelly
In his official capacity as Director, Illinois State Police

By: /s/ Jason A. Kanter
Jason A. Kanter, AAG
Sarah H. Newman, AAG
Office of the Illinois Attorney General
General Law Bureau
100 West Randolph Street, 13th Floor
Chicago, Illinois 60601
jkanter@atg.state.il.us

KWAME RAOUL
Attorney General of Illinois

snewman@atg.state.il.us
(312) 814-5022/6131
Counsel for Defendant Kelly

ROBERT BERLIN
DuPage County State's Attorney
By: /s/ Lisa A. Smith
Lisa A. Smith
Lisa.Smith@dupageco.org
DuPage County State's Attorney's Office
503 N. County Farm Road
Wheaton, IL 60187
630-407-8206
Counsel for Defendant Berlin