ALLIANCE DEFENSE FUND

July 10, 2008

Mr. Stephen Martino
Kansas Racing and Gaming Commission
700 SW Harrison, Suite 420
Topeka, Kansas 66603-3754

Re: Oppressive tactics used by the City of Mulvane to silence opposition to casinos

Dear Mr. Martino:

I am writing to you on behalf of Jacque Farnsworth of Mulvane, Kansas, to inform you of the oppressive tactics used by the City of Mulvane to silence critics of the proposed casinos in the Mulvane area. The Alliance Defense Fund represents Mrs. Farnsworth in a lawsuit against the City based on its practices and policies in stifling opposition to the proposed casinos. The Alliance Defense Fund is a legal alliance, defending the right to speak and hear the truth through strategy, training, funding, and litigation.

On January 10, 2008, the Mulvane City Council passed resolutions setting special meetings for January 16, 2008 and March 13, 2008, where it would entertain presentations by Harrah's and MGM/Foxwoods Development Company to build a casino in the City, seeking the City's endorsement. In both of these meetings, citizens who wanted to ask questions that pertained to moral issues were criticized, called out of order, and even in one instance, escorted out of the meeting by armed police.

For instance, during Harrah's presentation at the January 16, 2008 meeting, a representative from Harrah's talked about its commitment to promoting responsible gambling and its commitment to help the host community be a "vibrant place[] to live and work." After the Harrah's representative finished his presentation, the Mayor opened the floor for questions and comments from local citizens. Mrs. Farnsworth, a local resident, wanted to ask a question about what would happen to the City if money was taken out of the local economy and used for gambling. This was a fair question in light of the Harrah's representative's statements about its commitment against irresponsible gambling and its commitment to help the host community be a vibrant place to live and work.

But rather than let Mrs. Farnsworth make her public comment, the Mayor shut her up and had her escorted out of the meeting by two armed police officers. The following is the discussion between the Mayor and Mrs. Farnsworth:

> Mrs. Farnsworth: "My concern is also for the amount of the moneys that will be taken out of local economy. Money that would normally be used for clothing and entertainment on the local business..."
>
> Mayor: "I don't believe you're asking a question addressing the presentation by Harrah's. I believe your - that's more on social ills. I said they would not be addressed."

Mrs. Farnsworth: "No, no, no. I'm asking my question. I just want them to understand my background. OK? My question is, that I want to know, if you are going to be taking this money, and making this money from the people here, then where is the money going to come from for those people who are normally spending it on the local economy through clothing, and ..."

Mayor: "Your question is out of order."

Mrs. Farnsworth: "Can you please explain why the question is out of order?"

Mayor: "Out of order."

Mrs. Farnsworth: "Can you tell me why it's out of order?"

Mayor: "I specifically said that we would address questions to concerning the casino or the resort development and its facilities and how the City would handle it or address that. You are addressing a social issue over which they have no control. So your question is out of order."

Mrs. Farnsworth: "No, my question is regarding the Casino itself and it having an impact on our economy."

Mayor: "Your question is out of order."

Mrs. Farnsworth: "No, you know what, everybody else...."

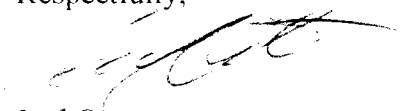
Mayor: "Excuse me, would you please escort the lady out?"

Mrs. Farnsworth was then escorted out of the public meeting by two armed police officers. There were many other incidents in the January and the March meetings where the Mayor criticized individuals who wanted to talk about issues that had moral implications by calling them "out of order." Attached is a copy of the Complaint filed in the United States District Court for the District of Kansas that goes into greater detail about the City's tactics of silencing opposition to the casinos.

It is my understanding that you are seeking input from citizens as to whether allowing a casino in the Mulvane area is in the public's best interest. Because the City has pursued this matter by silencing the opposition, even to the point of removing a dissenter by armed guard simply for presenting an opposing viewpoint, the Commission should not allow a casino in the Mulvane area until further hearings can be held as to the true desire of the community. This cannot be deciphered until fair hearings are held where the citizens are allowed to speak without ridicule and being called out of order just for asking pertinent tough questions.

If you have any questions pertaining to this lawsuit, feel free to contact me at (913) 685-8000, or email, joster@telladf.org.

Respectfully,



Joel Oster

enclosure

cc: Matthew All
James Bergfalk
Bob Boaldin
Garry Boston
Jack Brier
Dean Ferrell
Jacqueline Vietti

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

JACQUE FARNSWORTH,

Plaintiff,

vs.

CITY OF MULVANE, KANSAS; JAMES P. FORD, in his individual capacity,

Defendants.

Civil Action No. 08-1150-MLB-DWB

VERIFIED COMPLAINT

I. INTRODUCTION

1. This civil rights action is brought to protect and ensure the well-established constitutional right to engage in free speech in a public forum.

2. Defendants have a policy and practice of unconstitutionally discriminating based on speech content and viewpoint during the section of City Council meetings that has been opened for public comment.

3. Plaintiff seeks a declaration that this policy and practice is unconstitutional and a permanent injunction prohibiting Defendants from impermissibly discriminating against her and others based on speech content and viewpoint. Plaintiff also seeks damages to compensate for violation of her constitutional rights.

II. JURISDICTION AND VENUE

4. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988.

5. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

6. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

7. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).

8. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(3).

9. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

10. Venue is proper under 28 U.S.C. § 1391 because this claim arose within this District, and because upon information and belief all Defendants reside within the District.

III. IDENTIFICATION OF PLAINTIFF

11. Plaintiff Jacque Farnsworth is and was at all times relevant to this case, a resident of Peck, Kansas.

12. Mrs. Farnsworth is over the age of 18.

13. Mrs. Farnsworth resides within Unified School District #263.

14. Mrs. Farnsworth pays taxes to the City.

IV. IDENTIFICATION OF DEFENDANTS

15. Defendant City of Mulvane, Kansas ("City") is a civil body politic, organized under Kansas law. The City is authorized to sue and be sued in its own name.

16. Defendant James P. Ford is Mayor of the City ("Mayor"), and is sued in his individual capacity.

V. ALLEGATIONS OF FACT

17. The City is governed by duly elected members of a City Council.

18. The City regularly holds City Council meetings.

19. These meetings are presided over by the Mayor.

20. On January 10, 2008, the City Council passed resolutions setting special meetings for January 16, 2008 and March 13, 2008 (the "Meetings").

21. The purpose and object of the January 16, 2008 meeting was to entertain a presentation by Harrah's proposing the building of a casino in the City, and asking for the City's endorsement.

22. The purpose and object of the March 13, 2008 meeting was to entertain a presentation by MGM/Foxwoods Development Company proposing the building of a casino in the City, and asking for the City's endorsement.

23. The notice for each of the Meetings stated that the object and purposes of the Meetings was for "[h]earing public comments and questions on the issue of such an endorsement," and for "[d]iscussing, considering and acting upon, if appropriate, a resolution of endorsement of said lottery gaming facility to include any and all matters ancillary or related thereto without limitation."

24. The notice for each of the Meetings requested that the Mayor conduct the public comment section of the meeting "in a manner he deems appropriate to maintain the dignified nature, decorum, and safety of all persons attending."

25. The notice for each of the Meetings suggested that during the public comment section, "[s]peaker content be limited to matters relating to the request for endorsement."

26. Prior to the section of the Meetings designated for questions and comments, the Mayor made the following statements:

a. "This is not a referendum or open forum on gambling and social ills. Any attempt to present it as such will be considered out of order and terminated."

b. "Any of these actions will result in your being removed from the meeting."

c. "Restrict your questions to the presentation or the manner in which the City will be expected to be involved."

d. "Questions addressing other subjects, for example annexation or zoning, are out of order and not responded to."

e. "Questions will be restricted to the presentation and or how the City will handle or address any portions of the presentation."

The January 16, 2008 City Council Meeting

27. During Harrah's presentation at the January 16, 2008 meeting, a representative from Harrah's stated: "Back in the year 2000 Harrah's adopted what we call a Code of Commitment. This is a public pledge that sets forth important promises to the people who matter most to us. The Code of Commitment includes commitments to guests, to encourage responsible gambling."

28. During the Harrah's presentation, the presenter also said: "Our commitment to host communities is to help them to be more vibrant places to live and work."

29. During the Harrah's presentation, the presenter also said: "Promoting responsible gambling is an important part of our culture. It is the foundation, in fact, of our Code of

Commitment. Our position is simple and unequivocal. If a customer plays at a Harrah's Casino for any reason other than for the fun of it, that customer is playing for the wrong reason."

30. After Harrah's presentation to the City Council, the Mayor opened the floor for questions and comments from local citizens.

31. In order to participate in this forum, the speaker was required to, inter alia, have reached the age of majority, and reside within Unified School District #263.

32. Mrs. Farnsworth met these requirements.

33. Mrs. Farnsworth was recognized by the Mayor and permitted to speak at the podium.

34. Thereafter, the following discussion between the Mayor and Mrs. Farnsworth took place:

Mrs. Farnsworth: "My concern is also for the amount of the moneys that will be taken out of local economy. Money that would normally be used for clothing and entertainment on the local business..."

Mayor: "I don't believe you're asking a question addressing the presentation by Harrah's. I believe your - that's more on social ills. I said they would not be addressed."

Mrs. Farnsworth: "No, no, no. I'm asking my question. I just want them to understand my background. OK? My question is, that I want to know, if you are going to be taking this money, and making this money from the people here, then where is the money going to come from for those people who are normally spending it on the local economy through clothing, and ..."

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Mayor: "I specifically said that we would address questions to concerning the casino or the resort development and its facilities and how the City would handle it or address that. You are addressing a social issue over which they have no control. So your question is out of order."

Mrs. Farnsworth: "No, my question is regarding the Casino itself and it having an impact on our economy."

Mayor: "Your question is out of order."

Mrs. Farnsworth: "No, you know what, everybody else...."

Mayor: "Excuse me, would you please escort the lady out?"

35. Mrs. Farnsworth was then escorted out of the public meeting by two armed police officers, in uniform.

36. During the public question and comment portion of the January 16, 2008 Meeting, numerous members of the public were permitted to express their view that the casino would be an economic boon to the City.

The March 13, 2008 Meeting

37. During the MGM/Foxwoods presentation in the March 13, 2008 Meeting, the presenters spent a great deal of time describing how the proposed casino would be an economic and cultural benefit to the City.

38. The MGM/Foxwoods presenters also said, "being a good neighbor is more than what we do, it is who we are ....This is what we will bring to Mulvane."

39. After the MGM/Foxwoods presentation to the City Council, the Mayor opened the floor for questions and comments from local citizens.

40. Numerous citizens spoke out in favor of the idea of a casino in the City and expressed their opinion that it would be an economic and cultural benefit to the community.

41. When a woman named Dorothy Mills began her comment with, "Might as well tell you, I'm not for the casino. This is a moral issue," the Mayor interrupted her and said she was "out of order."

42. A member of the City Council stated that he wanted Ms. Mills to be able to speak.

43. The Mayor then said, I will allow you to speak because that's the desire of the council, members of the council. However, I state that you are out of order based on the ground rules presented."

44. After Ms. Mills concluded her comments, the Mayor said, "[F]or the record, Ms. Mills was out of order based under the ground rules that were established for comment."

45. When another citizen stated in her comment that "Casinos are not biblical" and are bad for the community, the Mayor responded, "you are out of order because you ignored the ground rules, but city council persons wanted to let you speak, but you are out of order."

46. None of those individuals expressing the view that the casino would be good for the community were interrupted or told they were "out of order."

47. None of those individuals expressing the view that the casino would be good for the community required a City Council member to speak up for them before they were allowed to continue speaking.

48. Defendants' policy and practice of censoring speech based on content and viewpoint violated, and is violating, clearly established law.

49. Defendants knew or should have known that their policy and practice of censoring speech based on content and viewpoint violated clearly established law.

50. Mrs. Farnsworth plans on speaking at future City Council meetings during the public comment period and expressing her views on the morality and social impact of issues being considered.

51. Based on Defendants' unconstitutional policies and practices, Plaintiff fears she will be censored and possibly embarrassed by being forcibly removed from the meeting.

52. Plaintiff's speech has been, and is being chilled by Defendants and their unconstitutional policy and practice.

VI. ALLEGATIONS OF LAW

53. Each and all of the acts alleged herein were done by Defendants under the color and pretense of local ordinances, regulations, customs, usages, and policies of the City of Mulvane.

54. Defendants' actions were taken pursuant to the City's policies and practices.

55. The Mayor is the final policy maker for the Town for purposes of regulating what is said during the public comment period of council meetings.

56. The decision to deny Plaintiff access to a public forum based on the content and viewpoint of her speech is a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by the Defendants.

57. All of the actions of the Defendants were done in violation of clearly established law.

58. Unless and until the Defendants' unconstitutional policies and actions are enjoined, the Plaintiff will suffer and continue to suffer irreparable harm to his federal constitutional rights.

VII. FIRST CAUSE OF ACTION – VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE UNITED STATES CONSTITUTION

59. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.

60. The public comment portion of the City Council Meetings is a designated public forum.

61. Defendants prohibited Plaintiff from speaking in this forum based on the content and viewpoint of her speech.

62. Defendants only allowed some of the other individuals who pointed out the negative impact of the casinos on the community to continue speaking if a member of the City Council decided they should be heard.

63. Defendants' policies and actions are an unconstitutional prior restraint on speech.

64. Defendants' policy and practice of censoring speech based on content and viewpoint in a designated public forum violated, and is violating, Plaintiff's free speech rights.

65. Defendants' policy and practice does not serve a compelling governmental interest, nor is it narrowly tailored to achieve a compelling governmental interest.

VIII. SECOND CAUSE OF ACTION – VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

66. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.

67. Defendants' policy and practice is vague and allows for unbridled discretion.

68. Defendants' policy and practice denied, and is denying, the fundamental rights of Plaintiff and others.

69. Defendants' policy and practice does not serve a compelling governmental interest, nor is it narrowly tailored to achieve a compelling governmental interest.

70. Defendants' policy and practice of censoring speech based on content and viewpoint during the public comment period of City Council Meetings violated, and is violating, Plaintiff's right to due process of law.

IX. THIRD CAUSE OF ACTION – VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

71. The allegations contained in all preceding paragraphs are realleged and incorporated herein by reference.

72. Plaintiff was not permitted to speak during the public comment period of City Council meetings based on their speech content and viewpoint.

73. Others expressing opposition to casinos in Mulvane, Kansas because of their negative social and economic impact were only permitted to speaking if a member of the City Council indicated that they should be heard.

74. Other similarly situated individuals in favor allowing a casino in Mulvane, Kansas were and are permitted to speak during the public comment period of City Council meetings without censorship of their speech content and viewpoint, and without first having a member of the City Council speak up for them.

75. This disparate treatment was and is based on a fundamental right.

76. Defendants do not have a narrowly tailored compelling interest for this disparate treatment.

77. Defendants' policy and practice censoring speech based on content and viewpoint during the public comment period of City Council Meetings violated, and is violating, Plaintiff's right to equal protection.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

A. That this Court enter a Declaratory Judgment declaring Defendants' policy and practice of censoring speech during the public comment period of City Council meetings based on content and viewpoint violated, and is violating, the constitutional rights of the Plaintiff and others similarly situated;

B. That this Court issue a permanent injunction prohibiting Defendants from unconstitutionally censoring speech during the public comment period of City Council meetings due to the content and viewpoint of the speech of the Plaintiff and others similarly situated;

C. That this Court award Plaintiff nominal and compensatory damages against Defendants for their violation of Plaintiff's clearly established constitutional rights;

D. That this Court award Plaintiff her costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988;

E. That this Court grant such other and further relief as this Court deems equitable and just; and

F. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders.

THIS CASE IS TO BE FILED IN WICHITA, KANSAS DIVISION.

Respectfully submitted this 20th day of May, 2008

ALLIANCE DEFENSE FUND

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Attorneys for Plaintiff

Dated: May 20, 2008

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746, I hereby declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Jacque Farnsworth