

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

KELSEY NICOLE MCCAULEY, a.k.a.
KELSEY BOHN,

Plaintiff,

– Versus –

The CITY OF NEW ORLEANS;
MITCHELL J. LANDRIEU, in his
official capacity; RONAL SERPAS, in
his official capacity.

Defendants.

NUMBER: 12-cv-2334

JUDGE: .

MAGISTRATE JUDGE:

VERIFIED COMPLAINT

INTRODUCTION

1. This is an action under 42 U.S.C. §§ 1983 and 1988. Plaintiff Kelsey Nicole McCauley seeks a temporary restraining order, a preliminary injunction and, eventually, a permanent injunction barring the City of New Orleans from enforcing certain provisions of New Orleans Municipal Code §54-419, also known as the City’s “aggressive solicitation” ordinance, in violation of her First and Fourteenth Amendment rights. McCauley also seeks a declaratory judgment, nominal damages and attorneys’ fees.

JURISDICTION AND VENUE

2. The Court has original jurisdiction in this matter under 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the City of New Orleans is located within this District, and because the individual Defendants reside in this District.

4. Declaratory relief is authorized by 28 U.S.C. § 2201 and 2202. A declaration of law is necessary to determine the respective rights and duties of the parties.

THE PARTIES

5. Plaintiff KELSEY NICOLE MCCAULEY is an adult resident of Kenner, Louisiana, and a member of Raven Ministries, a religious congregation that regularly preaches on Bourbon Street in the French Quarter. Kelsey travels to New Orleans approximately three times a week for that purpose.

6. Defendant CITY OF NEW ORLEANS is a municipality of the State of Louisiana. At all relevant times, the City employed the individual defendants named below. The City is directly responsible for acts complained of herein due to the policies and practices of its police department and other employees, and because it enacted the aggressive solicitation ordinance. The City maintains the right and power to sue and be sued.

7. Defendant MITCHELL J. LANDRIEU, is the Mayor and a resident of New Orleans. He is responsible for the final supervision of the New Orleans Police Department, and for the final execution and enforcement of the City's ordinances.

Landrieu is a final policymaker on all issues related to the ordinance challenged here, and he is sued in his official capacity.

8. Defendant RONAL SERPAS is a resident of New Orleans and the Superintendent of the New Orleans Police Department. He enforces Louisiana's criminal laws and the City's ordinances. Serpas is a final policymaker on all issues related to the ordinance challenged here, and he is sued in his official capacity.

FACTUAL ALLEGATIONS

9. Every Friday and Saturday night, Pastor Troy Bohn and various members of his congregation, known collectively as Raven Ministries, assemble on the 500 Block of Bourbon Street to preach the Gospel.

10. They gather in the middle of the thoroughfare, which is closed to cars, to convey a message of peace and compassion. They ask passersby if they are familiar with the life and teachings of Jesus Christ, invite listeners to share in Christ's message, and evangelize to persons who may seek spiritual redemption.

11. They typically display a large cross emblazoned with the words "Raven Street Church," and they usually hold signs or wear t-shirts that read "I Love Jesus," "Ask Me How Jesus Changed My Life," or similar messages.

12. While they sometimes have spirited debate with listeners who chose to engage them, they do so peacefully.

13. They do not preach hate or intolerance, they do not condemn those with whom they disagree, they do not use obscene language or images, and they do not physically pursue, harass or touch passersby.

14. Pastor Troy and his congregation do not solicit donations of any kind¹.

15. They make every effort to comply with applicable ordinances and the demands of police, and prior to the events that gave rise to this action, no member of Raven Ministries had ever been penalized or cited for his or her French Quarter preaching activities.

16. Plaintiff Kelsey Nicole McCauley is a member of Raven Ministries.

17. Kelsey regularly accompanies Troy and the rest of his ministry to their Bourbon Street assemblies, where she speaks passionately about her spiritual awakening and religious convictions.

18. Kelsey does not solicit donations of any kind.

19. On Friday, September 14, 2012, Pastor Troy and several members of his congregation were at their usual spot on the 500 Block of Bourbon Street, when they were arrested by the New Orleans Police Department for violating §54-419(c)(4) of the City's "aggressive solicitation" ordinance.

20. The ordinance reads, in relevant part:

§54-419(c)(4) - No person, *in any public or private place, shall use offensive, obscene or abusive language, or grab, follow or engage in conduct which reasonably tends to arouse alarm or anger in others, or walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. A person shall be guilty of obstructive interference if, in a public place, he intentionally obstructs pedestrian or vehicular traffic. It shall be*

¹ The ordinance at issue here defines solicitation as "any plea made in person where: (a) A person by vocal appeal requests an immediate donation of money or other item from another person; or (b) A person verbally offers or actively provides an item or service of little or no value to another in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation. However, solicitation shall not include the act of passively standing, sitting, or engaging in a performance of art with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry by another person. §54-419(b)(1).

prohibited for any person or group of persons to loiter or congregate on Bourbon Street for the purpose of disseminating any social, political or religious message between the hours of sunset and sunrise.”

(Emphasis added.)

21. NOPD officers ushered Troy, Kelsey and the rest of the congregation off the street, arrested Troy and a few others, and told those not arrested, including Kelsey, not to come back.
22. Troy and the other arrestees were taken to the police station.
23. Kelsey, who had not been arrested, accompanied Troy to the station.
24. Once at the station, Troy and a few others were cited, but Kelsey was sent home with a warning and has no pending charge.
25. All members of Raven Ministries were released a few hours later with the admonition that if they appeared again, they again would be arrested.
26. Kelsey deeply wants to return to Bourbon Street to continue speaking to the public about her faith – indeed, *she feels that her spiritual commitment and religious calling compel her to go out again this coming weekend.*
27. As much as she feels it is her religious duty to return, Kelsey is also afraid of arrest and prosecution, as she has been expressly told by the police that she will suffer such treatment if she returned.

CAUSES OF ACTION

FIRST CLAIM

(The First Amendment: §54-419(c)(4) is a content-based, viewpoint-discriminatory restriction on free speech and assembly)

28. Plaintiff realleges and reincorporates the above allegations.

29. §54-419(c)(4) is a content-based, viewpoint-discriminatory measure that bars social, political and religious speech in a traditional public forum, Bourbon Street, between the hours of sunset and sunrise, and bars “offensive” speech at all times and places in the French Quarter.

30. In the alternative, §54-419(c)(4) is a content-based, viewpoint-neutral measure that serves the same purpose.

31. Either way, §54-419(c)(4) is subject to strict scrutiny.

32. The City has no compelling interest necessitating §54-419(c)(4).

33. Even if the City had a compelling interest necessitating §54-419(c)(4), the measure is not so narrowly-tailored that no less restrictive measure would satisfy the City’s interest.

34. As a direct result of §54-419(c)(4) and the threats she has received from officers of the New Orleans Police Department, Kelsey fears arrest and prosecution if she returns to Bourbon Street.

35. As such, §54-419(c)(4) is unconstitutional under the First Amendment, both facially and as-applied.

SECOND CLAIM

(The First Amendment: Alternatively, §54-419(c)(4) is an improper restriction on the time, place or manner of free speech and assembly)

36. Plaintiff realleges and reincorporates the above allegations.

37. Because §54-419(c)(4) is content-based, both on its face and as-applied, it cannot be a valid time, place or manner restriction.

38. However, even if §54-419(c)(4) is content-neutral, it nonetheless imposes an unconstitutional time, place or manner restriction on First Amendment activity, both facially and as-applied, as it is not justified by a substantial state interest, is not narrowly tailored, and does not leave ample alternative fora for Kelsey's and Raven Ministries' expression.

THIRD CLAIM
(First and Fourteenth Amendment: §54-419(c)(4) is vague)

39. Plaintiff realleges and reincorporates the above allegations.

40. §54-419(c)(4) leaves critical terms undefined, thereby failing to give speakers notice of what First Amendment activities are prohibited.

41. §54-419(c)(4) also gives little or no clear guidance to law enforcement, thereby encouraging arbitrary or selective enforcement.

42. Kelsey's religious speech on Bourbon Street has been chilled by her fear of arrest and prosecution under §54-419(c)(4).

43. §54-419(c)(4) is therefore unconstitutionally vague, both facially and as-applied.

FOURTH CLAIM
(Fourteenth Amendment: §54-419(c)(4) is overbroad)

44. Plaintiff realleges and reincorporates the above allegations.

45. §54-419(c)(4) has no legitimate sweep.

46. If §54-419(c)(4) had a legitimate sweep, it would be substantially overbroad because, in general, it criminalizes a substantial amount of protected speech relative to any legitimate sweep.

47. §54-419(c)(4) also is overbroad as-applied, because Kelsey and her fellow worshipers within Raven Ministries specifically have been targeted for engaging in protected speech that falls outside any legitimate sweep of §54-419(c)(4).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kelsey Nicole McCauley, having no adequate remedy at law, requests the following:

1. A temporary restraining order, preliminary injunction and eventually, permanent injunction barring Defendants and their agents from enforcing §54-419(c)(4);
2. A declaratory judgment that §54-419(c)(4) is unconstitutional;
3. Nominal damages;
4. Reasonable attorneys' fees, expenses and costs under 42 U.S.C. § 1988 and any other applicable law; and
5. Any equitable and additional relief which the Court deems proper.

Respectfully submitted by:

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VERIFICATION

I, Kelsey Nicole McCauley, hereby verify that the allegations of this complaint are factually correct to the best of my knowledge.


Kelsey McCauley