

DONALD F. BURKE, ESQ. #008011983
LAW OFFICE OF DONALD F. BURKE
45 GALE ROAD
BRICK, N.J. 08723
TEL: (732) 966-4922
ATTORNEYS FOR PLAINTIFFS
CHRISTINE SAVAGE AND KYHEEM
DAVIS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

CHRISTINE SAVAGE AND KYHEEM
DAVIS,

Plaintiffs,

v.

NEPTUNE TOWNSHIP, NEPTUNE
TOWNSHIP POLICE DEPARTMENT,
JAMES M. HUNT, JR. AND MICHAEL J.
BASCOM,

Defendants.

CIVIL ACTION

DOCKET NO.:

VERIFIED COMPLAINT AND DEMAND FOR
INJUNCTIVE RELIEF AND JURY TRIAL

Plaintiffs, KYHEEM DAVIS and CHRISTINE SAVAGE, by and through their undersigned attorney Donald F. Burke, Esq., by way of a Verified Complaint against defendants, state as follows:

INTRODUCTION

1. This action seeks injunctive and declaratory relief as well as damages and attorneys' fees for the unconstitutional actions, customs, practices and policies of defendant NEPTUNE TOWNSHIP, promulgated by defendant Police Chief JAMES M. HUNT, JR. by authority of defendant Police Director MICHAEL J. BASCOM, as set forth in the Neptune Township Police Department Standard Operating Procedure Volume 5,

Chapter 10 entitled “Public Information” which constitute a prior restraint and unlawful restriction on plaintiffs’ constitutionally protected right of free speech.

JURISDICTION

1. The court has subject-matter jurisdiction over the instant lawsuit, as this action arises under the, the New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 to -2, 42 *U.S.C.A.* § 1983 and other applicable statutory and constitutional provisions.
2. The acts complained of that are attributable to the defendants all occurred within the jurisdiction of this court.

PARTIES

2. Plaintiff CHRISTINE SAVAGE is an individual who is a citizen of the State of New Jersey and is a Police Sergeant employed by defendant NEPTUNE TOWNSHIP.
3. Plaintiff KYHEEM DAVIS is an individual who is a citizen of the State of New Jersey and is a Police Officer employed by defendant NEPTUNE TOWNSHIP.
4. Defendant NEPTUNE TOWNSHIP is a municipality in the County of Monmouth, State of New Jersey and is a governmental unit that controls the operations and employees of the NEPTUNE TOWNSHIP POLICE DEPARTMENT (the “Department”).
5. Defendant NEPTUNE TOWNSHIP POLICE DEPARTMENT is an agency of a governmental unit.
6. Defendant JAMES M. HUNT, JR. is employed by defendant NEPTUNE TOWNSHIP as Chief of Police.
7. Defendant MICHAEL J. BASCOM is Chief Financial Officer, Economic

Development Director, Emergency Management Coordinator and was at times relevant hereto the Police Director for the defendant NEPTUNE TOWNSHIP.

8. The individual defendants are named herein in their official and individual capacities for wrongful and unconstitutional conduct in violation of the Constitutions of the United States and New Jersey, the New Jersey Civil Rights Act and the common law.

BACKGROUND

9. The Neptune Township Police Department Standard Operating Procedure Volume 5, Chapter 10 entitled "Public Information" states:

It is the policy of the Neptune Township Police Department that no one, except persons authorized by the Chief of Police, Police Director or designee, may communicate with reporters or any media representatives about the work or operations of the Neptune Township Police Department, including, but not limited to, investigations, criminal charges, personnel matters or litigation.

10. NEPTUNE TOWNSHIP is the subject of media scrutiny as a result of, among other things, the following:

- a. The resignation of Police Sergeant Elena Gonzalez due to retaliation and harassment for opposing unlawful practices in the Neptune Township Police Department,
- b. Former Police Sergeant Philip Seidle's murder of his wife,
- c. The death while in custody of Katie Lee Thomas, age 21.

11. Additionally, plaintiffs have pending lawsuits alleging discrimination, retaliation and violation of their civil rights.

12. Media representatives have asked to interview plaintiffs on matters of public

concern involving NEPTUNE TOWNSHIP. The Asbury Park – Neptune NAACP is a long-standing civil rights organization in the community established in 1927. Its annual Freedom Fund Gala will be held on Saturday, March 3, 2018 at 6:00 p.m. at the Jumping Brook Country Club, 210 Jumping Brook Road, Neptune, New Jersey 07753 and Elena Gonzalez and Christine Savage are among the 2018 Honorees.

13. On May 2, 2017 plaintiff CHRISTINE SAVAGE sought permission to speak out on matters of public concern notwithstanding the prohibition of Neptune Township Police Department Standard Operating Procedure Volume 5, Chapter 10.

14. The letter dated May 2, 2017 stated as follows:

The policy of the Neptune Township Police Department providing that “no one, except persons authorized by the Chief of Police, Police Director or designee, may communicate with reporters or any media representatives about the work or operations of the Neptune Township Police Department” is not narrowly tailored to serve a compelling government interest and constitutes a prior restraint. Please take immediate steps to address the unconstitutionality of the Township of Neptune Township Police Department Standard Operating Procedure Volume; 5 Chapter. 10 Subject: Public Information so I may advise Sergeant Christine Savage that she may speak out on matters of public concern regarding the operations of the Neptune Township Police Department and communicate with reporters or any media representatives fear of reprisals.

15. NEPTUNE TOWNSHIP did not respond to the May 2, 2017 letter.

16. Plaintiffs have not spoken publicly about matters of public concern involving NEPTUNE TOWNSHIP, including their own civil rights and the civil rights of others because they fear discipline and reprisals.

17. Defendants knew or should reasonably have known that Neptune Township Police Department Standard Operating Procedure Volume 5, Chapter 10 was unconstitutional because in 1999 a similar policy of the New Jersey State Police embodied in Art. XIII, Section 19 of the New Jersey State Police Rules and Regulations (Regulation 19) was declared unconstitutional.

18. State Police Regulation 19 stated in pertinent part:

A member shall:

- a. Not willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which such member receives or acquires in the course of and by reason of official duty, unless specifically authorized by competent Division authority.
- b. Treat as confidential, unless the contrary is specifically authorized by competent Division authority, any matters or information which pertain to the Division, its operations, investigations or internal procedures.
- c. Not disseminate, distribute or supply to any unauthorized member or any other person, an original, copy or abstract of any Division document, unless specifically authorized by competent Division authority.

19. After analyzing the issues the Superior Court of New Jersey granted plaintiffs' motion for a preliminary injunction, as it applied to sections (a) and (b) of Regulation 19, and entered a Preliminary Injunction stating "plaintiffs have demonstrated irreparable harm, a settled legal right and a likelihood of success on the merits."

20. Thus, Neptune Township Police Department Standard Operating Procedure Volume 5, Chapter 10 entitled "Public Information," by restricting speech on matters of public concern by prohibiting communications with "reporters or any media representatives about the work or operations of the Neptune Township Police

Department, including, but not limited to, investigations, criminal charges, personnel matters or litigation” violates “clearly established” statutory or constitutional rights of which a “reasonable person” in the position would have been aware.

COUNT I

DEFENDANTS HAVE VIOLATED THE CONSTITUTION OF THE UNITED STATES AND 42 U.S.C.A. SECTION 1983

21. Plaintiffs KYHEEM DAVIS AND CHRISTINE SAVAGE repeat, reiterate and re-allege the preceding paragraphs as if fully set forth at length herein.

22. The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend. I (1791).

23. The First Amendment applies to the states through the Fourteenth Amendment. U.S. CONST. amend. XIV (1868).

24. The First Amendment prohibits censorship.

25. When government seeks to regulate speech, something so closely touching our most precious freedoms, its regulations must be precise.

26. Defendants NEPTUNE TOWNSHIP, NEPTUNE TOWNSHIP POLICE DEPARTMENT, JAMES M. HUNT, JR. and MICHAEL J. BASCOM seek to suppress speech on matters of public concern.

27. Defendants NEPTUNE TOWNSHIP, NEPTUNE TOWNSHIP POLICE DEPARTMENT, JAMES M. HUNT, JR. and MICHAEL J. BASCOM have engaged in unconstitutional conduct

and have unlawfully infringed plaintiffs' civil rights and continue to persist in their unconstitutional and unlawful behavior.

28. Such obstreperous conduct is intentional, reckless and willful and wanton and warrants the imposition of punitive and exemplary damages.

COUNT II

DEFENDANTS HAVE VIOLATED THE CONSTITUTION OF THE STATE OF NEW JERSEY AND THE NEW JERSEY CIVIL RIGHTS ACT

29. Plaintiffs CHRISTINE SAVAGE AND KYHEEM DAVIS repeat, reiterate and re-allege the preceding paragraphs as if fully set forth at length herein.

30. Pursuant to the New Jersey Civil Rights Act, *N.J.S.A. § 10:6-1, et seq.*, plaintiffs assert a cause of action against defendants to redress, inter alia, violations of the New Jersey Constitution and laws of New Jersey.

31. Specifically, defendants NEPTUNE TOWNSHIP, NEPTUNE TOWNSHIP POLICE DEPARTMENT, JAMES M. HUNT, JR. and MICHAEL J. BASCOM seek to suppress speech on matters of public concern.

32. Defendants NEPTUNE TOWNSHIP, NEPTUNE TOWNSHIP POLICE DEPARTMENT, JAMES M. HUNT, JR. and MICHAEL J. BASCOM have engaged in unconstitutional conduct and have unlawfully infringed plaintiffs' civil rights and continue to persist in their unconstitutional and unlawful behavior.

33. Defendants NEPTUNE TOWNSHIP, NEPTUNE TOWNSHIP POLICE DEPARTMENT, JAMES M. HUNT, JR. and MICHAEL J. BASCOM have violated and continue to violate the

rights secured to plaintiffs CHRISTINE SAVAGE AND KYHEEM DAVIS by the New Jersey Constitution of 1947, article I, paragraph 6, which provides:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

34. Further, defendants violated the rights of plaintiffs CHRISTINE SAVAGE AND KYHEEM DAVIS secured by the New Jersey Constitution of 1947, article I, paragraph 18, which provides:

The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

35. Defendants NEPTUNE TOWNSHIP, NEPTUNE TOWNSHIP POLICE DEPARTMENT, JAMES M. HUNT, JR. and MICHAEL J. BASCOM, acting under color of law, have acted in concert to deprive plaintiff of constitutional rights and have deprived plaintiffs of substantive rights, privileges or immunities secured by the Constitution or laws of this State, and have interfered with or attempted to interfere with the plaintiffs' exercise or enjoyment of those substantive rights, privileges or immunities by threats, intimidation or coercion.

PRAYER FOR RELIEF

For the foregoing reasons, plaintiffs pray for the following relief:

1. A preliminary and permanent injunction enjoining defendants from enforcing the Neptune Township Police Department Standard Operating Procedure Volume 5, Chapter 10 entitled “Public Information”;
2. A preliminary and permanent injunction enjoining defendants from threatening or engaging in disciplinary action against plaintiffs for engaging in speech on matters of public concern;
3. A declaratory judgment that the Neptune Township Police Department Standard Operating Procedure Volume 5, Chapter 10 entitled “Public Information” is unconstitutional;
4. An award of compensatory damages;
5. An award of punitive and exemplary damages;
6. Costs and attorneys’ fees pursuant to 42 *U.S.C.A.* § 1988, the New Jersey Civil Rights Act and any other applicable statute or authority; and
7. Such other relief at law or in equity this Court in its discretion deems just and appropriate.

Respectfully submitted,

LAW OFFICE OF DONALD F. BURKE
Attorneys for Plaintiffs
CHRISTINE SAVAGE AND KYHEEM DAVIS

By: s/ Donald F. Burke
Donald F. Burke, Esq.

Dated: February 26, 2018

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by Jury.

CERTIFICATION REGARDING OTHER ACTIONS

The matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, to the best of our knowledge, except *Davis v. Township of Neptune, et al.*, Docket No.: MON-L-4209-15 and *Savage v. Township of Neptune, et al.*, Docket No.: MON-L-1528-16. Also, to the best of our knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading as John Does, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

DEMAND FOR PRODUCTION OF STATEMENTS

Plaintiff demands true and complete copies of any statements made by plaintiffs CHRISTINE SAVAGE AND KYHEEM DAVIS pursuant to *Rule* 4:10-2(c). This demand is deemed to be continuing.

DESIGNATION OF TRIAL ATTORNEY

Pursuant to *Rule* 4:25-4, DONALD F. BURKE, ESQUIRE, is hereby designated as trial counsel in the above-captioned action on behalf of plaintiffs CHRISTINE SAVAGE AND KYHEEM DAVIS.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

Respectfully submitted,

LAW OFFICE OF DONALD F. BURKE
Attorneys for Plaintiffs
CHRISTINE SAVAGE AND KYHEEM DAVIS

By: s/ Donald F. Burke
Donald F. Burke, Esq.

Dated: February 26, 2018

VERIFICATION

I, Christine Savage, of full age do affirm and state:

1. I am the plaintiff in the above action.

1. I have reviewed the contents of the Verified Complaint and state they are true to the best of my knowledge and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Christine Savage

Dated: February 7, 2018

VERIFICATION

I, Kyheem Davis, of full age do affirm and state:

1. I am the plaintiff in the above action.

1. I have reviewed the contents of the Verified Complaint and state they are true to the best of my knowledge and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Kyheem Davis

Dated: February 9, 2018