

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

ANDREA BURTON)
1044 Tiffany South #3)
Youngstown, Ohio 44514)

Plaintiff,)

v.)

JUDGE ROBERT P. MILICH)
(In His Official Capacity))
Youngstown Municipal Court)
Youngstown City Hall)
26 South Phelps Street)
Youngstown, Ohio 44503)

and)

JUDGE ELIZABETH A. KOBLY)
(In Her Official Capacity))
Youngstown Municipal Court)
Youngstown City Hall)
26 South Phelps Street)
Youngstown, Ohio 44503)

and)

CITY OF YOUNGSTOWN)
)
c/o Martin Hume, Director of the)
Law Department)
Youngstown City Hall)
26 South Phelps Street)
Youngstown, Ohio 44503)

Defendants.)

CASE NO.:

JUDGE:

VERIFIED COMPLAINT
(Jury Demand Endorsed Herein)

INTRODUCTION

Now comes Andrea Burton (“Plaintiff”), by and through the undersigned counsel, and for her Complaint alleges as follows:

1. The Plaintiff is an African-American attorney, who seeks declaratory judgment and permanent injunction against the City of Youngstown Municipal Court for a violation of 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the U.S. Constitution.
2. Plaintiff further seeks money damages from the City of Youngstown.

JURISDICTION

3. Plaintiff reincorporates by reference the allegations set forth above as if fully rewritten herein.
4. Jurisdiction is invoked pursuant to Title VII of the Civil Rights Act of 1964, as amended, as well as 28 U.S.C. § 1331, §1343 and §1367 as one of more of the claims arise “under the Constitution, laws, or treaties of the United States.”
5. Venue is conferred under 28 U.S.C. § 1391 (b) as a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Ohio.

PARTIES

6. Plaintiff is an African-American, U.S. citizen, who makes her offices and home in the City of Youngstown, Ohio.
7. At all relevant times she has a license to practice law in the State of Ohio.
8. Defendant, Judge Robert P. Milich (“Judge Milich”), is a white, U.S. citizen, serving on the Youngstown Municipal Court bench. Judge Milich has taken an oath to follow the Ohio and U.S. Constitution in a fair and impartial manner.

9. Defendant, Judge Elizabeth Kobly (“Judge Kobly”), is a white, U.S. citizen, serving on the Youngstown Municipal Court bench. Judge Kobly has taken an oath to follow the Ohio and U.S. Constitution in a fair and impartial manner.
10. The City of Youngstown is an incorporated municipality under the law of the State of Ohio, as such it has developed a Municipal Court in which Defendant Milich and Defendant Kobly sit.
11. There are only two Municipal judges in the City of Youngstown.
12. The City of Youngstown allows Judge Milich and Judge Kobly to enforce the local municipal statutes, the Ohio Revised Code, the Ohio Constitution, and U.S. Constitution.

STATEMENT OF THE FACTS

13. Plaintiff reincorporates by reference the allegations set forth above as if fully rewritten herein.
14. The Plaintiff on November 5, 2012 became a licensed practicing attorney in the State of Ohio.
15. Plaintiff is an African-American female who makes her law practice at 1045 Tiffany South, Suite No. 3, Youngstown, Ohio 44514.
16. Plaintiff receives approximately ninety (90) percent of her annual income from criminal appointments directed from the Youngstown Municipal Court. The Youngstown Municipal Court has two sitting judges, Defendants, Judge Robert Milich and Judge Elizabeth Kobly.
17. During the month July, Plaintiff began wearing approximately a one (1) inch in diameter black button captioned “**Black Lives Matter.**” (See Exhibit 1).

18. Plaintiff appeared in Mahoning County Common Pleas Court and Youngstown Municipal Court on numerous occasions wearing said button on her blouse without incident.
19. However, on or about July 22, 2016, Plaintiff appeared in Defendant Judge Milich's Municipal Court to represent a client and secure appointments.
20. Plaintiff was wearing the **Black Lives Matter** button on her blouse; however, the wordage on the button was mostly covered by a jacket. Only a small fraction of the button could be seen. No clear wordage on the button could be seen.
21. Plaintiff states that the language "**Black Lives Matter**" is not a political statement. Further, the language is intended to be simply a social statement or symbolic speech.
22. To Plaintiff's knowledge, no **Black Lives Matter** petition or language has appeared on any ballot or political advertising in the general region.
23. Further, on July 22, 2016, while in Defendant Judge Milich's courtroom, police officers appeared with black tape over their badges. However, Defendant Judge Milich singled out Plaintiff.
24. Defendant Judge Milich ordered Plaintiff to his chambers.
25. Defendant Judge Milich handed Plaintiff a copy of *Berner v. Delahanty*, 129 F.3d 20 (1st Cir.; Cert. denied 1998). (See Exhibit 2).
26. Defendant Judge Milich ordered Plaintiff to remove the button.
27. Plaintiff requested a reason. No valid reason was provided other than words to the effect that members of the bar must remain impartial showing no opinion one way or the other.
28. Plaintiff refused to remove the button and requested legal counsel.
29. Defendant Judge Milich ordered Plaintiff to the courtroom on the record.

30. Defendant Judge Milich ordered Plaintiff to state her name and further ordered Plaintiff to remove the button.
31. Plaintiff respectfully declined.
32. Plaintiff, without the benefit of an evidentiary hearing, was placed in contempt, ordered arrested, and sentenced to five (5) days in jail. (See Exhibit 3 timestamped July 22, 2016 at 10:12 AM).
33. Plaintiff requested a stay. The stay was denied. Plaintiff was booked in the Youngstown Jail.
34. While in custody in jail, several attorneys came to Plaintiff's aid.
35. Out of the presence of Plaintiff, Defendant Judge Milich finally stayed his order, stating that:

Defendant's sentence of 5 days jail for direct contempt of court is stayed on following conditions:

- defendant complies with dress code of Youngstown Municipal Court, and
 - Defendant doesn't wear or exhibit a "Black Lives Matter" or any other political badge or pin in Youngstown Municipal Court or in the courtroom halls
 - Defendant complies with the holding in *Berner v. Delahanty* 129 F 3d 20, 523 U.S. 1023 (cert denied 1998)" (See Exhibit 4).
36. Plaintiff has been denied all new municipal court appointments from July 22, 2016 to August 16, 2016.

**FIRST CAUSE OF ACTION
FIRST AMENDMENT VIOLATION, 42 U.S.C. § 1983
(Judge Robert P. Milich)**

37. Plaintiff incorporates the Statement of Facts in to the First Cause of Action above as if fully rewritten herein.

38. Defendant Judge Milich violated Plaintiff's First Amendment right to Free Speech by limiting said speech in regard to the two Journal Entries of July 22, 2016 in the following manner:
- a. Plaintiff's **Black Lives Matter** button is symbolic speech, permissible under the law.
 - b. Defendant Milich improperly held Plaintiff in "direct contempt."
 - c. The dress code policy is unconstitutionally vague. (See Exhibit 5).
 - d. The Municipal Court building is shared by other departments beyond the courtroom. Plaintiff was denied the opportunity to wear said button, "in the courtroom hallways." This is overly broad and burdensome.
 - e. Plaintiff is not allowed to wear the badge or, "any other political button," in public areas subject to jail.
 - f. Plaintiff is ordered to comply with a case that has no basis or legal weight in the Sixth Circuit.
39. **WHEREFORE**, in regards to Defendant Judge Milich, Plaintiff demands that this court enter a **declaratory judgment**, declaring Defendant Judge Milich's actions to be a violation of the First Amendment and further **enjoin** Defendant Judge Milich and others in concert with him from enforcing such an illegal and inappropriate order. Under 42 U.S.C. §§ 1983 and the First Amendment to the United States Constitution, Plaintiff further requests attorney's fees and costs.

**SECOND CAUSE OF ACTION
FOURTEENTH AMENDMENT – DUE PROCESS AND EQUAL PROTECTION
(Judge Robert P. Milich)**

40. Plaintiff reincorporates by reference the Statement of Facts and First Cause of Action set forth above as if fully rewritten herein.
41. Plaintiff further states that Defendant Judge Milich, in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution, denied Plaintiff a fair hearing. Plaintiff was denied the opportunity to present her defense in an evidentiary hearing
42. Had Plaintiff been allowed to present such a defense, she would have been able to point inconsistencies in the application of the court rules. For example, police officers are allowed to appear routinely in the courtroom and display symbolic speech by wearing black tape over their badges.
43. Defendant Judge Milich, in his discretion, picks and chooses who he will hold in contempt in regard to the dress code, and or, political speech.
44. Further, without the benefit of a hearing, Defendant Judge Milich denied Plaintiff an opportunity to wear any pin or badge in the public halls of building, which shares its space with non-courtroom activities, “in the courtroom halls,” is unconstitutionally vague.
45. Defendant Judge Milich requires Plaintiff to abide by a court case that has no effect or enforcement in the state of Ohio. The state of Ohio is subject to Sixth Circuit, not First Circuit authority.
46. **WHEREFORE**, under 42 U.S.C. § 1983, Plaintiff demands that by way of a **declaratory judgment**, this court find Defendant Judge Milich in violation of the

Fourteenth Amendment of the U.S. Constitution, Equal Protection, and Due Process and further **enjoin** Defendant Judge Milich and others in concert with him from enforcing the rules and regulations without Due Process or Equal Protection of the law. Plaintiff further requests attorney's fee and costs.

**THIRD CAUSE OF ACTION
FOURTEENTH AMENDMENT
(Judge Robert P. Milich and Judge Elizabeth A. Kobly)**

47. Plaintiff reincorporates by reference the Statement of Facts and First and Second Causes of Action set forth above as if fully rewritten herein.
48. Plaintiff states that Defendant Judge Milich and Defendant Judge Kobly, in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment of the U.S. Constitution, denied Plaintiff an opportunity to secure future appointments without the benefit of Due Process.
49. Plaintiff states that her new appointments come directly from the Youngstown Municipal Court, which is controlled by Defendant Judge Milich and Defendant Judge Kobly.
50. Plaintiff states that since July 22, 2016 to August 16, 2016, the number of cases that she has received through the appointment process has significantly decreased.
51. Plaintiff states that Defendants conspired to deny Plaintiff future appointments, unless Plaintiff complies with the illegal and inappropriate order of Defendant Judge Milich on July 22, 2016 at 11:52 AM. (See Exhibit 5).
52. Plaintiff states that she is being economically freezed-out of making a living, without Due Process
53. **WHEREFORE**, Plaintiff demands that this Court issue a **declaratory judgment** against Defendant Judge Milich and Defendant Judge Kobly, finding their actions in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment and further **enjoin** Defendant Judge

Milich and Defendant Judge Kobly from any further action or further retaliatory actions.

Plaintiff further requests attorney's fee and costs.

**FOURTH CAUSE OF ACTION
FIRST AND FOURTEENTH AMENDMENT VIOLATIONS
(City of Youngstown)**

54. Plaintiff reincorporates by reference the Statement of Facts and the First, Second, and Third Causes of Action set forth above as if fully rewritten herein.
55. Plaintiff states that Defendant Judge Milich and Defendant Judge Kobly are employed by the City of Youngstown.
56. The City of Youngstown allows the Defendants to enforce the statutes of City of Youngstown, the Ohio Constitution, and the U.S. Constitution.
57. Plaintiff states that the actions of Defendants Judge Milich and Judge Kobly are clearly a violation of said statutes and constitutions.
58. **WHEREFORE**, for violations of 42 U.S.C. § 1983 and the First Amendment and Fourteenth Amendment of the U.S. Constitution, Plaintiff demands that this court issue a **declaratory judgment**, ordering the City of Youngstown employees to cease and desist the actions of Defendants Judge Milich and Judge Kobly. Plaintiff further requests that this court issue an **injunction** enjoining the City of Youngstown's employees and administrators from any further violation of Plaintiff's right. Plaintiff further demands that this Court order the City of Youngstown to pay compensatory damages for pain, suffering, anguish, and humiliation to Plaintiff, in an amount that will reimburse Plaintiff for actual damages and pain, suffering, anguish, and humiliation, to be determined by this court. Plaintiff further requests attorney's fees and costs.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Respectfully submitted,

EDWARD L. GILBERT CO., LPA

/s/ Edward L. Gilbert
Edward L. Gilbert (0014544)
One Cascade Plaza, Suite 825
Akron, Ohio 44308
(330) 376-8855 Telephone
(330) 376-8857 Fax
egilbert@edwardlgilbert.com

VERIFICATION

STATE OF OHIO

COUNTY OF Summit : ss.

Andrea Burton, being first duly cautioned and sworn, hereby states that the facts set forth in the foregoing Verified Complaint are true as she verifiably believes.

Andrea Burton
ANDREA BURTON

Sworn to me and subscribed in my presence at Akron, Ohio this 18th day of August, 2016.

James D. King
Notary Public