

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

HAMILTON COUNTY, TENNESSEE, by and)
through LARRY L. HENRY, as CHAIRMAN of the)
HAMILTON COUNTY BOARD OF COUNTY)
COMMISSIONERS,)

Petitioner,)

vs.)

Civil Action No. _____)

HOPE ALEXANDER, PATRICIA BAZEMORE,)
HEIDI DAVIS, JOY DAY, FRANK EATON,)
HOWARD HAYES, LANDON HOWARD, SAM)
MCKINNEY, SHANE PINSON, OCCUPY)
CHATTANOOGA, JOHN DOES and MARY DOES,)

Respondents.)

PETITION FOR DECLARATORY JUDGMENT

Petitioner Hamilton County, Tennessee, through Larry L. Henry, as Chairman of the Hamilton County Board of County Commissioners, petitions this Court pursuant to the provisions of 28 U.S.C. § 1331, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure, for entry of a declaratory judgment regarding the Constitutionality, as applied, of the Rules and Regulations for the Public’s Use of Hamilton County Properties and Grounds (“Rules and Regulations”), attached hereto and incorporated herein as **Exhibit A**.

Hamilton County only asks that its public property, which belongs to each citizen of this county, be respected and protected.

SUMMARY OF PETITION

1. Hamilton County recognizes the rights of citizens to appropriately express and convey opinions under the First and Fourteenth Amendments to the United States Constitution and Article I, § 19 of the Tennessee Constitution.

2. As an initial matter, it is important to recognize what this Petition seeks and does not seek. First, this Petition seeks only the following declarations:

(a) that the Rules and Regulations for the Public's Use of Hamilton County Properties and Grounds may be applied consistent with constitutional protections under the federal and state constitutions in the context of the present circumstances; and

(b) that those present on the Courthouse lawn are not entitled to camp on the Courthouse lawn overnight, erect or maintain monuments or markers without approval, maintain open burnings, or damage or deface government property.

3. Second, and importantly, this Petition **does not seek** any of the following relief:

(a) Hamilton County **does not seek** a declaration that Respondents may not express or communicate their ideas or views on county property or at the Courthouse;

(b) Hamilton County **does not seek** a declaration that Respondents discontinue their protests through their physical presence;

(c) Hamilton County **does not seek** to evict Respondents from the Courthouse or otherwise limit the time during which Respondents may be present at the Courthouse;

(d) Hamilton County **does not seek** to prevent Respondents from camping in an approved manner on appropriately designated County property; and

(e) Hamilton County **does not seek** to prevent Respondents from engaging in maintaining a campfire in an approved manner on appropriately designated County property.

4. This Petition has been filed in lieu of other action because the Hamilton County Commission ("Commission") respects its obligations to see that public property is appropriately available for the free expression and communication of views, ideas, and opinions. However, the

Commission is also obligated to ensure that the public property entrusted to its care is respected and protected. The Commission firmly believes that these duties and goals are not mutually exclusive and can exist harmoniously. Freedom of expression is attainable without damage to public property.

5. Under the Constitutions of the United States and of Tennessee, Hamilton County may enforce its content-neutral regulations, whether formal or informal, and may apply reasonable time, place and manner restrictions on the exercise of rights of expression.

6. The Rules and Regulations adopted by the Commission on January 4, 2012 are merely a formal statement of informal policies that have been in place and enforced for more than thirty (30) years. The County has never authorized damage to County property.

7. Hamilton County seeks a declaration that its Rules and Regulations may be applied without infringing upon the freedoms of expression guaranteed by the Constitution of the United States and of the State of Tennessee.

PARTIES AND JURISDICTION

8. Petitioner Hamilton County, Tennessee is a political subdivision of the State of Tennessee. Hamilton County is governed by the Board of County Commissioners of Hamilton County, which, pursuant to Tenn. Code Ann. § 5-1-103, is the representative of the County and authorized to act for it. The Board of County Commissioners of Hamilton County is located in Chattanooga, Tennessee and has a business address of 401 Courthouse, 625 Georgia Avenue, Chattanooga, Tennessee 37402. The Board of County Commissioners of Hamilton County has direct authority over all County public buildings and grounds, including the Hamilton County Courthouse. Chapter No. 56, Private Acts, 1941, State of Tennessee.

9. Respondent Hope Alexander is a Hamilton County, Tennessee resident who, upon information and belief, resides at 708 Dallas Road, Chattanooga, Tennessee 37405. Upon information and belief, Ms. Alexander is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

10. Respondent Patricia Bazemore is a Walker County, Georgia resident who, upon information and belief, resides at 213 Barnhardt Circle, Fort Oglethorpe, Georgia 30742. Upon information and belief, Ms. Bazemore is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

11. Respondent Heidi Davis is a Hamilton County, Tennessee resident who, upon information and belief, resides at 20 Mason Drive, Apartment No. 421, Chattanooga, Tennessee 37415. Upon information and belief, Ms. Davis is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

12. Respondent Joy Day is a Hamilton County, Tennessee resident who, upon information and belief, resides in Hamilton County, Tennessee. Upon information and belief, Ms. Day is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

13. Respondent Frank Eaton is a Hamilton County, Tennessee resident who, upon information and belief, resides at 5947 Crestview Drive, Hixson, Tennessee 37343. Upon information and belief, Mr. Eaton is a citizen of the United States who has occupied, used, or

maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

14. Respondent Howard Hayes is a Polk County, Tennessee resident who, upon information and belief, resides at 830 Welcome Valley Road, Benton, Tennessee 37307. Upon information and belief, Mr. Hayes is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

15. Respondent Landon Howard is a Hamilton County, Tennessee resident who, upon information and belief, resides at 1615 Vance Avenue, Apartment A, Chattanooga, Tennessee 37404. Upon information and belief, Mr. Howard is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

16. Respondent Sam McKinney is a Hamilton County, Tennessee resident who, upon information and belief, resides at 316 High Street, Apartment 5, Chattanooga, Tennessee 37403. Upon information and belief, Mr. McKinney is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

17. Respondent Shane Pinson is a Hamilton County, Tennessee resident who, upon information and belief, resides in Hamilton County, Tennessee. Upon information and belief, Mr. Pinson is a citizen of the United States who has occupied, used, or maintained a campsite at 625 Georgia Avenue, Chattanooga, Tennessee, since on or before November 9, 2011.

18. Respondent Occupy Chattanooga is, upon information and belief, an unincorporated association individuals consisting of the persons identified above and of others

presently unknown, who are assembled at the Hamilton County Courthouse since on or about November 9, 2011.

19. The true names or capacities, whether individual, corporate, associate, or otherwise of Respondents identified as John Does and Mary Does are unknown to Hamilton County, who therefore sues such Respondents by fictitious names and will amend this Petition to show their true names and capacities when ascertained. Hamilton County asserts upon information and belief that each of the Respondents designated as a John Doe or as a Mary Doe is responsible in some manner for the actions described herein.

20. This case arises under the Constitution of the United States of America and of the Constitution of the State of Tennessee, in which an actual present controversy exists as to the ability of Hamilton County to remove tents, temporary structures, campsites, and signs staked into the ground consistent with protections guaranteeing freedom of expression. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1367, and 2201.

21. This Court has jurisdiction over the parties to this cause.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

23. Hamilton County is the owner of certain real property located at 625 Georgia Avenue, Chattanooga, Tennessee 37402-1496. This property contains the Hamilton County Courthouse, which houses the Circuit and Chancery Courts for the Tennessee Eleventh Judicial District, as well as the offices of the Hamilton County Board of County Commissioners and other County Offices.

24. The grounds of the Courthouse are carefully maintained and kept so as to preserve the property in an attractive and intact condition, readily available to all people who wish to see and enjoy it by their presence.

25. On January 4, 2012, the Hamilton County Commission adopted the aforementioned Rules and Regulations. The Rules and Regulations are content-neutral and have been narrowly tailored to meet the significant governmental interests of assuring the preservation of all County property, including Courthouse facilities, preventing dangerous activities, and coordinating multiple uses of County properties, including the Courthouse lawn.

26. Where Hamilton County allows camping and campfires on other property, as Hamilton County does, and where there are numerous alternate channels for communication, the enforcement of these restrictions is consistent with federal and state Constitutional protections.

27. Beginning on or about November 9, 2011, tents and other temporary structures were erected on the Courthouse lawn by Respondents, who are individuals associated with the self-styled Occupy Chattanooga group.

28. Respondents state that by staking tents on the Courthouse lawn, whether occupied or not, they are exercising their Constitutional rights of free speech and to petition the government for redress of grievances.

29. Respondents state that overnight protest is an act of free speech, and that they are attempting to draw attention to government corruption. Respondents have also stated that they are not “camping out,” but rather “are protesting with [their] physical presence.”

30. Respondents have not applied to the County Mayor’s office, or to any other County department or official for authority to erect tents and signs on the Courthouse lawn, to conduct open burning under trees on the Courthouse lawn, or to damage the lawn.

31. Hamilton County submits that the erection and maintenance of tents and temporary structures, whether occupied or otherwise, is not necessarily speech protected by the federal and state constitutions. But, even if such actions here amount to protected symbolic speech, Hamilton County may lawfully prevent such actions through the enforcement of regulations that are:

- (a) content neutral;
- (b) narrowly tailored to achieve the County's interests; and
- (c) leave open ample alternative channels for protected expression.

The Hamilton County Rules and Regulations meet each of these three tests.

32. Hamilton County has substantial governmental interests in assuring the preservation of property—including the County Courthouse and its facilities and grounds—that are entrusted to it for care; in preventing dangerous activities on such property; and in coordinating multiple uses of property entrusted to Hamilton County and its citizens.

33. Hamilton County's prohibition against unregulated camping and the erection, maintenance, and use of tents or other temporary structures on County property, including the Courthouse grounds, is a content-neutral regulation. The Rules and Regulations do not, whether on their face or in practice, distinguish favored speech from disfavored speech on the basis of the ideas or views expressed.

34. Further, Hamilton County's prohibition against unregulated camping and the erection, maintenance, and use of tents or other temporary structures on County property, including the Courthouse grounds, is narrowly tailored to achieve its interests in protecting property entrusted to the care of Hamilton County and its citizens. The Rules and Regulations

promote these substantial government interests that would be achieved less effectively absent the regulation.

35. Finally, Hamilton County's prohibition against unregulated camping and the erection, maintenance, and use of tents or other temporary structures on County property, including the Courthouse grounds, does not restrict the ability of Respondents to express and communicate their message, as ample alternative channels of communication continue to exist. Respondents may still communicate their views on public property and sidewalks, by use of handbills, signs, through their internet website, (<http://www.occupychattanooga.net/>), Facebook page (<http://www.facebook.com/OccupyCHA>), Twitter account (<http://twitter.com/OccupyCHA>) and other internet social media. There is other available parkland within 100 yards of their tents.

36. Importantly, **Hamilton County does not seek a declaration that Respondents may not be present to lawfully protest on the Courthouse grounds after hours or at night.** Hamilton County also does not seek a declaration on the use of tents or temporary structures appropriately located in areas other than those at the County Courthouse.

37. Similarly, Hamilton County has substantial governmental interests in assuring that signs are not staked into the ground of County property, including the Courthouse lawn, or placed upon trees or monuments on the Courthouse grounds, in that such conduct is detrimental to the preservation of public property that is entrusted to Hamilton County for its care.

38. Hamilton County's prohibition against unapproved placement of signs is a content-neutral regulation. The Rules and Regulations do not, whether on their face or in practice, distinguish favored speech from disfavored speech on the basis of the ideas or views expressed.

39. Further, Hamilton County's prohibition against unapproved placement of signs is narrowly tailored to achieve its interests in protecting property entrusted to the care of Hamilton County and its citizens. The Rules and Regulations promote these substantial government interests that would be achieved less effectively absent the Rules and Regulations.

40. Hamilton County's prohibition against unapproved placement of signs does not restrict the ability of Respondents to express and communicate their message, as ample alternative channels of communication continue to exist. Respondents may still communicate their views on public property and sidewalks, by use of handbills, signs, through their internet sites (<http://www.occupychattanooga.net/>), Facebook sites (<http://www.facebook.com/OccupyCHA>), Twitter sites (<http://twitter.com/OccupyCHA>) and other internet social media.

41. **Importantly, Hamilton County does not seek a declaration that *no sign* may be used or displayed by Respondents, even on the grounds of the County Courthouse.** Rather, Hamilton County only seeks a declaration that it may prohibit such signs that are displayed in such a way so as to injure, damage, or deface property entrusted to Hamilton County.

42. Hamilton County has substantial governmental interests in assuring that open fires are not present on County property, including the grounds of the Courthouse, in that maintaining open fires, particularly under or near trees or other combustible materials is detrimental to the preservation of public property that is entrusted to Hamilton County for its care.

43. Hamilton County's prohibition against open burning on County property, including the Courthouse grounds, is a content-neutral regulation. The Rules and Regulations do

not, whether on their face or in practice, distinguish favored speech from disfavored speech on the basis of the ideas or views expressed.

44. Further, Hamilton County's prohibition against open burning is narrowly tailored to achieve its interests in protecting property entrusted to the care of Hamilton County and its citizens. The Rules and Regulations promote these substantial government interests that would be achieved less effectively absent the Rules and Regulations.

45. Finally, Hamilton County's prohibition against open burning does not restrict the ability of Respondents to express and communicate their message, as ample alternative channels of communication continue to exist. Respondents may still communicate their views on public property and sidewalks, by use of handbills, signs, and through their internet sites (<http://www.occupychattanooga.net/>), Facebook sites (<http://www.facebook.com/OccupyCHA>), Twitter sites (<http://twitter.com/OccupyCHA>) and other internet social media.

REQUEST FOR DECLARATORY JUDGMENT

46. There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Hamilton County therefore requests that a declaratory judgment be entered as follows:

(a) that Hamilton County may lawfully enforce its Rules and Regulations for the Public's Use of Hamilton County Properties and Grounds that prohibit the erection, maintenance, and use of tents or other temporary structures on the Courthouse grounds through use of generally applicable, content-neutral regulations consistent with rights to expression guaranteed by the federal and state constitutions;

(b) that Hamilton County may, pursuant to these Rules and Regulations, lawfully remove tents and other temporary structures belonging to Respondents on the grounds of the Hamilton County Courthouse by Respondents;

(c) that Hamilton County may, pursuant to these Rules and Regulations, lawfully prohibit the placement of signage that results in the defacing of, and damage to, property entrusted to Hamilton County and its citizens by chalking, graffiti, or otherwise through use of generally applicable, content-neutral regulations consistent with rights to expression guaranteed by the federal and state constitutions;

(d) that Hamilton County may, pursuant to these Rules and Regulations, lawfully prohibit open burning on the grounds of the Courthouse;

(e) that Hamilton County may, pursuant to these Rules and Regulations, lawfully prohibit activities that cause damage to property entrusted to Hamilton County through use of generally applicable regulations that are content-neutral; and

(f) that Hamilton County may, pursuant to these Rules and Regulations, lawfully enforce such prohibitions regarding the defacing of and damage to property of Hamilton County against Respondents as described herein without infringing upon the freedoms of expression guaranteed by the Constitution of the United States and of the State of Tennessee.

WHEREFORE, premises considered, Hamilton County respectfully requests as follows:

1. That proper process issue and be served upon Respondents requiring them to appear and answer this Complaint in the manner and within the time permitted by law;
2. That this Honorable Court issue a declaratory judgment, as requested herein, allowing the Hamilton County Commission to ensure that public property is appropriately open

to expression and communication of views, ideas, and opinions, and at the same time ensure that public property is respected and protected;

3. That this Honorable Court tax all costs and expenses of this action, including attorneys' fees and discretionary costs, against the Respondents; and

4. That this Honorable Court award Hamilton County such other general and special relief to which it may be entitled, as the Court deems appropriate, and as justice and equity may require.

Respectfully submitted,

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