

name statutes of the State of California, registered in the County of Los Angeles as the DBA of The Pen, who is also writer and director of the movie, “The Last War Crime.”

4. Defendant Cumulus Media Inc., is a Delaware corporation with their principal executive offices in Atlanta, GA. Defendant Cumulus Media Inc. is the second largest owner and operator of AM and FM radio stations in the United States (behind Clear Channel Communications), operating 572 radio stations in 120 markets, in addition to a nationwide radio network serving more than 4,000 stations, as reported as of September 16, 2011. As originally filed, the Complaint in this case named WMAL as an additional defendant. Defendant Cumulus Media Inc. objected that WMAL was not a "legal entity," and Plaintiff then agreed with defendant Cumulus Media Inc. to stipulate to amend the Complaint to substitute DC Radio Assets, LLC as a defendant in place of WMAL as the proper additional party. Plaintiff is informed by defendant Cumulus Media Inc. and on that basis believes that defendant DC Radio Assets, LLC owns and operates an AM radio station in the District of Columbia using the call sign WMAL (hereinafter “WMAL”), and defendant DC Radio Assets, LLC is an indirect wholly-owned subsidiary of defendant Cumulus Media Inc. Defendant DC Radio Assets, LLC is also a Delaware Corporation, with their principal business office in Washington, DC.

QUESTIONS PRESENTED

5. This is a case posing at least two questions of probable first impression, namely
- (a) Is it a violation of equal protection to deny to policy speech the same protections as for political candidate speech embodied in 47 U.S.C. §315? and
 - (b) Is it an unacceptable chilling of free speech under the First Amendment for a commercial media outlet that holds itself out to serve the general public to refuse to accept an advertisement it does not agree with politically?

BACKGROUND AND FACTS

6. WMAL has a news/talk format and holds itself out to accept political advertisements to an audience they represent “reaches across all party lines.” In particular, WMAL offers to the general public and promotes their special power and ability to “deliver your message effectively to Congress members, staffers, and other Capitol Hill influencers” on policy issues. Moreover, WMAL promotes that their program content tackles “the hottest topics and news of the day.”

7. “The Last War Crime” is a narrative, dramatic film that deals with the very serious matters of the disastrous policy decision to attack and invade Iraq in 2003, justified to the American people at the time with false intelligence obtained by torture, and questions why nobody has been held accountable for these war crimes.

8. On or about 2/1/2012, plaintiff The Pen contacted Kim Dawson, account executive for WMAL, and agreed to make an advertising buy of 10 radio spots of 60 seconds duration each, for a total cost of \$4,500, to run during a one week period on the Sean Hannity program during their 3PM to 6PM afternoon drive time.

9. At the time the Sean Hannity program was billing itself as the “Beat Obama Express,” and was constructively little more than a non-stop 3 hour free political advertisement for the Republican party.

10. On or about 2/13/12, plaintiff The Pen then submitted a proposed finished and recorded audio ad, subtitled “Dick Cheney’s Extraordinary Vacation,” for the approval of WMAL. Delivered in a gently satirical manner, backed by music reminiscent of a game show, the spoken script of the ad was as follows:

“This is your lucky day, Dick Cheney. You've won a fabulous vacation trip to sunny Spain. An extraordinary vacation. That's like extraordinary rendition, except without the torture. Yes, Dick Cheney, you'll fly coach class, because that's how we travel, to beautiful, war criminal prosecuting Spain. Black bag over your head optional. We might even have a special greeting committee of the Spanish judiciary to meet you at the airport, the minute you step off the plane. You'll be staying in tidy dormitory style accommodations, with self maid service, for the length of your stay, which may be quite extended depending on how your trial goes. So do let us know when you might need a ticket back. We'll see what we can do, unless other countries want to extradite you first. Yes, an extraordinary vacation.

All for you, Dick Cheney. For more information and details go to lastwarcrime.com, that's Last War Crime dot com. The Last War Crime, a soon to be released full length feature film. Last War Crime dot com."

11. The same day Kim Dawson reported back that WMAL's General Sales Manager and Program Director had both rejected the ad on the grounds that it was "too controversial and offensive for many of our listeners."

12. Plaintiff The Pen then emailed Kim Dawson and asked, "Would it be fair to say your station is not interested in political sentiments of this kind?" Kim Dawson responded back by email, "Yes. I would say that is a fair assessment." Kim Dawson further stated by email that this was a "local decision," but that it would be a "challenge" to get any station owned by Cumulus Media Inc. to run the ad.

13. In justifying its decision to allow corporations for the first time to spend unlimited funds to buy free speech, the Supreme Court in Citizens United v. Federal Election Commission held inter alia repeatedly, and in the loftiest of terms, that policy speech and political candidate speech were both worthy of the highest First Amendment protection. For example, "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution," 558 U.S. 310 at 23, citing Buckley v. Valeo, 424 U.S. 1,14 (1976), with approval.

14. In exchange for obtaining a valuable license to operate a broadcast station using the public airwaves, each radio and television licensee, including WMAL, is required by law to operate its station in the "public interest."

CLAIM FOR RELIEF

15. Pursuant to 47 U.S.C. §315, if a media outlet accepts ads for one political candidate it cannot discriminate in accepting ads for any other political candidate. But if policy speech and political candidate speech have essentially equivalent First Amendment footing, as the Supreme Court has inescapably held, it must be an equal protection violation for a media outlet to accept policy related ads for some, as does

WMAL, but reject others they disagree with.

16. It would be the height of injustice, and a violation of the First Amendment in principle, to allow giant media corporations such as defendant Cumulus Media Inc., the ultimate owner of WMAL, to buy unlimited “free” speech themselves, as now endorsed by Citizens United v. Federal Election Commission, while at the same time permitting them to censor and deny that same free speech to political viewpoints they did not agree with.

17. By refusing to accept plaintiff’s radio ad for the movie, “The Last War Crime,” defendants have interfered with and restrained plaintiff’s First Amendment rights to express his views.

18. The actions of defendants in refusing to accept plaintiff’s radio ad for the movie, “The Last War Crime,” constitute a prior restraint of plaintiff’s First Amendment right to free speech.

19. Defendants’ refusal to accept plaintiff’s radio ad for the movie, “The Last War Crime,” was unreasonable, arbitrary, discriminatory and in violation of plaintiff’s rights because defendants routinely accept, in the course of their business, ads related to policy issues from other parties.

20. Unless restrained from doing so, defendants will continue to violate plaintiff’s constitutional rights.

21. The conduct of defendants has a profound chilling effect on the public discussion of policy matters of critical national importance, affecting all parties with a viewpoint defendants do not agree with.

22. Plaintiff has no plain, adequate or complete remedy at law to address these violations of plaintiff’s constitutional rights, and this suit for declaratory judgment and injunction is plaintiff’s only means of securing complete and adequate relief. No other remedy would offer plaintiff substantial and complete protection from continuation of defendants’ unconstitutional acts, policies and practices.

23. Unless this court grants the relief prayed for, plaintiff will suffer serious and

irreparable damage to his constitutional rights.

PRAYER

Plaintiff requests this Court to order the following:

1. Issue a declaratory judgment, declaring that defendants' refusal to accept plaintiff's advertisement for the movie, "The Last War Crime," was a violation of the Constitution of the United States under the First Amendment.
2. Enjoin and grant a permanent injunction restraining defendants from refusing to accept plaintiff's advertisement for the movie, "The Last War Crime."
3. Grant all other relief that is appropriate, including costs.

JURY TRIAL

Plaintiff demands a jury trial.

December 13, 2012

Respectfully submitted,

The Pen
The People's Email Network

In Pro Se