

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CASE NO: 09-

THE COMPLETE ANGLER, LLC,  
HERIBERTO QUINTERO and LORRAINEQUINTERO,

Plaintiffs,

vs.

THE CITY OF CLEARWATER, FLORIDA,

JURY TRIAL SOUGHT

Defendant.

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**VERIFIED COMPLAINT FOR DECLARATORY AND  
EMERGENCY INJUNCTIVE RELIEF AND DAMAGES**

**Preliminary Statement**

1. The Plaintiffs, HERIBERTO QUINTERO and LORRAINE QUINTERO, own and operate THE COMPLETE ANGLER, a bait and tackle shop in Clearwater, Florida. The Quinteros commissioned an artist to paint a marine-themed mural on the outside wall of the business depicting game fish and other sea life. The City of Clearwater, Florida (“the City”) exempts “art work” from its permitting requirements, but through its Development Code, endows itself with absolute discretion to determine precisely what constitutes art. The City determined that The Complete Angler’s marine-themed mural painting of game fish and other sea life is not art work, and previously fined the bait shop’s owner,

Heriberto (“Herb”) Quintero, hundreds of dollars for violations of the City’s signage ordinance. In an act of political protest, and to cover the “offending” art work, The Complete Angler draped the mural with a banner of the First Amendment. Over Presidents’ Day weekend, on February 14, 2009, Herb and Lorraine (“Lori”) Quintero received a new Notice of Violation that cited The Complete Angler for both the First Amendment banner and the “attached” sign, *i.e.*, the art work. The Complete Angler and its owners now sue the City for violation of their First Amendment rights. **Plaintiffs contemporaneously move for an Emergency Temporary Restraining Order** or Preliminary Injunction to preclude the City from instituting enforcement proceedings of its unconstitutional ordinances. Plaintiffs seek this relief as to both the First Amendment banner and the art work.

### **Jurisdiction and Venue**

2. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violation of their First Amendment rights.
3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed. R. Civ. P. 65.
4. Venue is appropriate in this District, as the Defendant is a municipality in Pinellas County, Florida.

## **Parties**

5. The Complete Angler LLC is a Florida corporation with its principal place of business in Clearwater, Florida.
6. Herb and Lori Quintero are the owners of The Complete Angler and residents of Clearwater, Florida.
7. The City of Clearwater is a political subdivision of the State of Florida organized under the laws of Florida.

## **Facts**

8. In December 2007 Herb and Lori Quintero invested their life savings to purchase and renovate a dilapidated building at 705 Ft. Harrison Avenue in Clearwater. They opened a bait and tackle shop called The Complete Angler. The property is zoned commercial.
9. The Complete Angler sells live and frozen bait, snacks and drinks, boat accessories, custom rods and reels and provides drive-through access to the Seminole Street boat ramp. Its website can be viewed at [www.thecompleteanglerstore.com](http://www.thecompleteanglerstore.com).
10. Shortly after opening for business, Herb and Lori Quintero commissioned Matt Evanson, a local artist, to paint a mural on the side of their bait and tackle shop. They gave him free rein to paint whatever he wanted that would depict the natural habitat and waterways that surrounded the bait shop. The mural to date

depicts images of six local game fish: snook, redfish, tarpon, dolphin, grouper and sailfish.

11. The mural remains incomplete due to the actions of the City. When completed, it will include additional depictions of marine vegetation and coral.

The mural contains no text.

12. The Complete Angler does not sell game fish.

### **The City's Ordinances**

13. The City's Development Code, in Division 18 entitled "Signs" provides:

The city is a resort community on the west coast of the state with more than five miles of beaches on the Gulf of Mexico. This city has an economic base which relies heavily on tourism. In order to preserve the city as a desirable community in which to live, vacation and do business, a pleasing, visually attractive urban environment is of foremost importance. The regulation of signs within the city is a highly contributive means by which to achieve this desired end. These sign regulations are prepared with the intent of enhancing the urban environment and promoting the continued well-being of the city.

Section 3-1801.

14. The Development Code further provides:

It is the purpose of this division to promote the public health, safety and general welfare through a comprehensive system of reasonable, consistent and nondiscriminatory sign standards and requirements. These sign regulations are intended to:

- A. Enable the identification of places of residence and business.
- B. Allow for the communication of information necessary for the conduct of commerce.

- C. Lessen hazardous situations, confusion and visual clutter caused by proliferation, improper placement, illumination, animation and excessive height, area and bulk of signs which compete for the attention of pedestrian and vehicular traffic.
- D. Enhance the attractiveness and economic well-being of the city as a place to live, vacation and conduct business.
- E. Protect the public from the dangers of unsafe signs.
- F. Permit signs that are compatible with their surroundings and aid orientation, and preclude placement of signs in a manner that conceals or obstructs adjacent land uses or signs.
- G. Encourage signs that are appropriate to the zoning district in which they are located and consistent with the category of use to which they pertain.
- H. Curtail the size and number of signs and sign messages to the minimum reasonably necessary to identify a residential or business location and the nature of any such business.
- I. Establish sign size in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains.
- J. Preclude signs from conflicting with the principal permitted use of the site or adjoining sites.
- K. Regulate signs in a manner so as to not interfere with, obstruct vision of or distract motorists, bicyclists or pedestrians.
- L. Require signs to be constructed, installed and maintained in a safe and satisfactory manner.
- M. Preserve and enhance the natural and scenic characteristics of this waterfront resort community.

Section 3-1802.

15. Although the City extensively regulates signage, its ordinances generally authorize the display of art work in both residential and commercial areas without development approval or any permit.

16. The Development Code designates certain signs as ‘Prohibited signs,’ Section 3-1803; the sets “General Standards,” Section 3-1804 and in Section 3-1805 lists “Signs permitted without a permit”:

**Section 3-1805. Signs permitted without a permit.**

The following signs *may be developed without development review* pursuant to Article 4 of this development code:

B. *Art work and/or architectural detail.*

(emphases added).

17. Section 8-102 of the City’s Community Development Code provides:

*Art work* means **drawings, pictures, symbols, paintings or sculpture which do not identify a product or business and which are not displayed in conjunction with a commercial, for profit or nonprofit enterprise.**

*Mural* means artwork applied to the wall of a building **which covers all or substantially all of the wall and depicts a scene or event of natural, social, cultural or historic significance.**

(emphases added).

18. “Holiday decorations” also require no permit and Defendant imposes no limitations on their size or content; the City does not define “holiday season.” The City’s Development Code is so broad in its definition of “holiday decoration” that it is meaningless:

*Sign, holiday decoration* means **any display** during a holiday season which shall be removed within ten days of the conclusion of the holiday.

Ord. 8-102 (emphasis added).

19. Section 3-1804.D of the City Code’s “General Standards” establishes the permissible size of banners:

A banner or flag may be used as a permitted freestanding or attached sign and, if so used, the area of the banner or flag shall be included in, and limited by, the computation of allowable area for freestanding or attached signs on the property.

20. Section 3-1806 of the Development Code regulates “Permitted signs requiring development review. Section 3-1806.3 regulates the size and number of “Attached signs” that are permitted in non-residential districts.

21. The notice of violation as to the First Amendment banner is an impermissible content-based restriction on protected speech, as holiday decorations do not require any permit, have no size or format restrictions, whether they are “Joy to the World,” “Peace on Earth,” Fourth of July banners, Christmas reindeer, Easter Bunnies, Veterans’ Day Flags, Martin Luther King Day portraits or illuminated displays for *any* holiday of *any* type.

22. In Section 3-2402 of its Code, “Public Art and Design Program,” the City further defines art work:

*Artwork* or *works of art* means tangible creations by artists exhibiting the highest quality of skill and aesthetic principles and includes all forms of visual art conceived in any medium, material, or combination thereof, including paintings, sculptures, statues, engravings, carvings, frescos, stained glass, mosaics, mobiles, tapestries, murals, photographs, video projections, digital images, bas-relief, high relief, fountains, kinetic, functional furnishings such as artist designed seating and pavers, architectural elements designed by an artist, and artist designed landforms or landscape elements.

23. The City of Clearwater’s “Public Art and Design Master Plan’s” Operating Guidelines provide, in part for public art that “enables people to engage in Clearwater’s unique landscape and climate – particularly its connection to water and sunlight.” *See*

[http://www.myclearwater.com/gov/depts/parksrec/arts\\_culture/pdf/Public\\_Art\\_and\\_Design\\_Program\\_Master\\_Plan.pdf](http://www.myclearwater.com/gov/depts/parksrec/arts_culture/pdf/Public_Art_and_Design_Program_Master_Plan.pdf)

(last viewed 2/18/09).

24. The Complete Angler’s mural “does not identify a product or a business” and it “is not displayed in conjunction with a commercial, for profit, or nonprofit enterprise.” Indeed, within the City there are many other murals painted on the exterior walls of businesses. These are but two examples:

- a. At 1435 Lakeview Road, “God’s Little Green Acre Day Care Center” has two murals that fill two exterior walls, portraying children, animals and a religious figure.
- b. “Frenchy’s Salt Water Café” at 419 Pointsettia Avenue, Clearwater Beach, has a fish mural on its exterior wall, a giant crab over its façade and advertises “Fresh Grouper Daily Specials.”

25. Moreover, an array of murals appears on various government buildings within the City of Clearwater. For example:

- a. The building located at 600 Franklin Street is owned by the City of Clearwater and its building-wide mural portrays first responders, including police officers and firefighters.
- b. The building located at 509 S. East Avenue is owned by Pinellas County; its three exterior wall murals portray marine life.
- c. The City of Clearwater parking garage has multiple exterior murals of birds.

26. In 2006, the Pinellas Circuit Court for the Sixth Judicial Circuit, Appellate Division, granted a Writ of Certiorari quashing the decision of the City's Code Enforcement Board that had cited the owner of an Egyptian restaurant, "Piramida" for a mural on its exterior wall that contained Egyptian hieroglyphics. The restaurant served food "with an Egyptian theme." The Appellate Division found that the "alleged sign, which contained carved drawings on the perimeter of the restaurant, did not "identify any product or business or convey any information to the public." The court concluded that the mural was not a sign. *Dauti v. City of Clearwater*, Appeal No. 06-0088AP-88B.

## The Notices of Code Violations

27. Beginning in March 2008, the Complete Angler received a series of Notices of Violation relating to various signs on their business. After months of navigating a bureaucratic maze and the ensuing confusion over what signage was or was not allowed under the City's ordinances, the City clarified the focus of the notices. The March 10, 2008 Notice of Violation includes the following:

Specifically, THE COMPLETE ANGLER business has erected one freestanding sign and a fish mural on the west wall without sign permits.

28. The "freestanding sign" issue has been resolved.

29. In an email dated January 6, the Assistant City Manager, Jill Silverboard, wrote to Herb Quintero:

The Complete Angler is permitted signage pursuant to the City of Clearwater Sign Code, subject to certain size, location and quantity restrictions. **By definition of the sign code, what you consider a "mural" is an attached sign.** Displays, such as your "mural," which cover useable space on a wall and are designed to convey information, such as the type of business occurring at a particular location, to the public and are visible from an abutting public right of way constitute a form of regulated signage.

(emphasis added).

30. Speaking for the City, Ms. Silverboard's interpretation of the ordinance as extending to a fish mural demonstrates that the ordinance confers unbridled discretion to determine when art work identifies a product or a business since the

art work neither names or identifies the business nor depicts any product that it sells.

31. Another City spokesperson, Joelle Castelli, was quoted as saying that the art work “depicts what he’s selling and that’s considered signage. *If it was a mural of kids playing in a park, that would be acceptable.*” (emphasis added).

32. The City in fact exercised its unbridled discretion and determined that the mural was not art work.

33. Herb Quintero was told by Michael Delk, Director of Planning and Zoning that The Complete Angler could apply for a permit for the mural but that it would be denied.

34. The Quinteros challenged the citation, but ultimately The Complete Angler pled *nolo contendere* and on January 9, 2009, paid fines and court costs totaling \$690.00.

35. On January 12, 2009, in an act of protest and to avoid accruing more signs, Herb Quintero covered the mural with a banner displaying the text of the First Amendment. The mural remains on the wall, unfinished and partially concealed by the First Amendment.

See <http://www.tampabay.com/news/localgovernment/article967057.ece> (last viewed February 18, 2009).

36. Underneath the full text of the First Amendment is the political statement:

**THE SUPREME COURT REQUIRES  
THE GOVERNMENT TO PROVIDE SUBSTANTIAL JUSTIFICATION  
FOR THE INTERFERENCE WITH THE RIGHT OF FREE SPEECH  
WHERE IT ATTEMPTS TO REGULATE THE CONTENT OF THE  
SPEECH**

37. On February 14, 2009 - - over Presidents' Day weekend - - The Complete Angler received a "Notice of Violation" citing the violation of Clearwater Code section 3-1804.D "Banners & Flags," and 3-1806B.3.A. "Attached Signs in Non-Residential Districts." The Notice further provides that "This is the second Notice of Violation issues for signs erected without permits."

38. The Notice of Violation requires The Complete Angler to correct the alleged violations by February 27, 2009 and requires the removal of the art work and the First Amendment banner. Plaintiffs continue to be threatened with daily fines for the display of the First Amendment and the art work.

39. The Complete Angler was fined in the past for the fish mural; the Quinteros paid those fines, and they continue to be threatened with fines for the signage violation and for court costs.

40. The First Amendment protects art work, including paintings.

41. It *should* go without saying, as well, that the First Amendment protects the display of its own text, proudly hung as a protest against government censorship and overreaching.

42. The City's restrictions on the size of banner and pennants, but its allowance of "holiday decorations" without need for *any* permitting and without regard to type, size or duration of display, impermissibly regulates speech based on content.

43. The City's display of patriotic murals, as depicted in the "First Responder" mural on City property at 600 Franklin Street makes the City a favored speaker, allowing it to communicate its patriotic devotion while at the same time compelling Plaintiffs to remove their patriotic banner that contains the very text of the First Amendment.

44. The City's regulation of protected speech invokes, and cannot survive strict scrutiny.

45. Even if the ordinances at issue were to be determined content neutral, they would not survive intermediate scrutiny.

46. The City's demand that the First Amendment banner be removed violates Plaintiffs' First Amendment rights to freedom of speech, expression and political protest.

47. The City's demand that the fish mural be removed violates Plaintiffs' First Amendment rights to freedom of speech and expression.

48. The above-described actions of Defendant were taken under color of state law and pursuant to the City of Clearwater's official custom, practice or policy.

49. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs herein alleged.

50. Plaintiffs are now suffering and will continue to suffer irreparable injury from Defendant's acts, policies and practices unless they are granted the relief sought by this action. Each day that Plaintiffs are threatened with ever-growing fines for failing to "remove" the mural and the First Amendment banner continues the denial of their Constitutional right to freedom of expression and to petition the government for grievances and constitutes irreparable harm.

51. Plaintiffs face immediate threat of injury and are contemporaneously moving for an emergency temporary restraining order.

52. Plaintiffs have incurred economic damages caused by the City's action, including but limited to the fines and costs related to the prior code proceedings.

### **RELIEF SOUGHT**

53. Defendant's ordinances 3-1805 and 3-1806B.3.A are unconstitutional on their face and as applied to Plaintiffs because the definition of "art work" is overbroad, vague, and because it vests unbridled discretion in enforcement authorities to arbitrarily determine when they think a sign identifies a product or a business or is displayed in conjunction with a commercial, for profit or nonprofit enterprise.

54. Defendant's ordinances Nos. 3-1805 and 3-1806B.3.A vest unfettered discretion upon the City to restrict constitutionally protected expressive activities; such discretion is not circumscribed by any discernible standards and thereby violates the First Amendment.

55. Defendant's banner ordinance No. 3-1804.D is unconstitutional on its face and as applied to Plaintiffs, as it regulates the size of a banner based on its content; there is no similar regulation or restriction on the size of "holiday displays," which require no permit and carry no size restriction.

56. Defendant's actions deny Plaintiffs the right to engage in constitutionally protected expressive activities.

57. 42 U.S.C. § 1983 provides a remedy for Defendant's actions.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

- (a) Injunctive relief prohibiting Defendant from denying Plaintiffs the right to engage in protected artistic displays on their property by displaying art work that depicts local marine life, including illustrations of game fish (the mural);
- (b) Injunctive relief prohibiting Defendants from compelling Plaintiffs to remove the art work on their property that depicts local marine life, including illustrations of game fish (the mural) or from proceeding with

code violation matters relating to the February 14, 2009 Notice of Violation;

(c) Injunctive relief prohibiting Defendants from compelling Plaintiffs to remove the First Amendment banner on their property or from proceeding with code violation matters relating to the February 14 Notice of Violation;

(d) Injunctive relief prohibiting Defendant from imposing and enforcing fines previously imposed or proposed against the Plaintiffs;

(e) Declaratory relief that Defendant's actions constitute a violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution;

(f) Damages to be determined;

(g) Attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

## Demand for Trial by Jury

As to those issues triable by jury, Plaintiffs demand a jury trial.

**Dated this 23<sup>rd</sup> day of February, 2009**

Respectfully submitted,

By:

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**Verification by****HERIBERTO QUINTERO PURSUANT TO 28 U.S.C. § 1746(2)**

I, Heriberto Quintero, declare pursuant to 28 U.S.C. § 1746 (2) that the facts alleged in this complaint are true and correct, based on my personal knowledge.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

**EXECUTED IN CLEARWATER, FLORIDA THIS 23<sup>rd</sup> DAY OF FEBRUARY, 2009.**

  

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**HERIBERTO QUINTERO**