

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

CHARLES CHIODO,

Plaintiff,

vs.

ROB KOEHLER, individually, and
CITY OF GAINESVILLE, a Florida
municipal corporation,

Defendants.

CASE NO.: 1:04 cv 377 MMP/AK

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTION AND MONEY DAMAGES**

Plaintiff, CHARLES CHIODO brings this action against the Defendants to obtain a final judgment declaring certain policies and practices of the City of Gainesville to be unconstitutional under the First Amendment to the United States Constitution, and an injunction permanently prohibiting their enforcement. Plaintiff further demands money damages from Defendants to compensate him for losses suffered as the result of his unlawful arrest in violation of Plaintiff's right to be free from unlawful police seizures, guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and his right of free speech under the First Amendment. Finally, Plaintiff asks the Court to award

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him all costs of this action, including a reasonable attorney's fee pursuant to 42 U.S.C. §1988.

JURISDICTION

1. This suit is brought pursuant to 42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

2. This case arises under the Constitution of the United States and this Court has original jurisdiction under 28 U.S.C. §§1331 and 1343. Declaratory and injunctive relief are authorized by 28 U.S.C. §§2201 and 2202.

3. This Court has supplemental jurisdiction over the state law issues raised by this Complaint under 28 U.S.C. §1367.

PARTIES

4. Plaintiff CHARLES CHIODO (hereinafter 'CHIODO') is a natural person and a resident of Alachua County, Florida.

5. Defendant ROB KOEHLER ("hereinafter "KOEHLER") is a natural person, a police sergeant with the Gainesville Police Department, and a resident of Alachua County, Florida. He is sued in his individual capacity.

6. Defendant, CITY OF GAINESVILLE (hereinafter "CITY"), is a Florida municipal corporation, organized and operating under the laws of the State of Florida.

7. The Gainesville Police Department is a department of the CITY OF GAINESVILLE.

VENUE

8. The City of Gainesville is located within the Northern District of Florida, Gainesville Division. All of the acts complained of herein have occurred or will occur, within the Northern District of Florida, Gainesville Division.

FACTS

9. CHARLES CHIODO is a long time political activist who frequently engages in protests and demonstrations in Gainesville, Florida and elsewhere in the State of Florida and the United States.

10. CHIODO is opposed to the Iraq War, and continued military presence in that country, as well as many of the policies of the Bush administration.

11. To express his opposition to the War and to Bush policies, CHIODO and a group of like-minded activists have engaged in twice-monthly demonstrations at the corner of West University Avenue and Thirteenth Street in Gainesville Florida.

12. The corner of West University Avenue and Thirteenth Street in Gainesville Florida is a public forum and the site of many protests, demonstrations, parades and speech events of all kinds. This site is at the main corner of the University of Florida and faces on two heavily-traveled streets. It is also a major pedestrian thoroughfare.

13. The demonstrations in which CHIODO participates have been a regular occurrence since at least the 2003 invasion of Iraq.

14. This group of activists is not part of a formal organization, but rather consists of a number of different organizations, groups and individuals each holding political views similar to those held by CHIODO and each being united in their opposition to the war and to current administration policies.

15. These demonstrations have always been peaceful. The demonstrators, CHIODO included, hold up signs expressing their political views, wave at cars and passersby, chant slogans and sing songs.

16. To the best of CHIODO's knowledge, no one has ever been arrested at one of these demonstrations, other than himself.

17. These demonstrations represent core political speech and are among the most important and time-honored activities in which an American citizen may engage. Demonstrations of this nature lie at the very heart of our democracy.

18. At most of these demonstrations, CHIODO displayed a large home-made sign featuring a cartoon figure with its head in the sand and an American flag protruding from its rear end. The sign includes the words "Bush Loyalists" in large letters above the cartoon figure and the words "Question Authority" to the side of the figure. A picture of the subject sign being held by the Plaintiff is attached as Exhibit "A" to this Complaint.

19. The subject sign was not intended to appeal to any prurient interest and does not in fact appeal to any such interest. The graphics and message of

the sign, taken as a whole, clearly convey an important political message, particularly in the context of the overall political demonstration with which it was associated. In addition, the sign, while controversial in a political sense, was not patently offensive given the contemporary community standards in Gainesville, Florida.

20. CHIODO has also displayed this sign at other demonstrations, including an anti-war rally in Washington, D.C.

21. Prior to the incidents complained of CHIODO has never had any difficulties or confrontations with law enforcement officers over the subject sign.

22. At one of the demonstrations in late March or April, Defendant KOEHLER approached CHIODO and ordered him to remove or cover up his sign.

23. At that time KOEHLER was in uniform and acting in his official capacity as a police sergeant for the Gainesville Police Department.

24. KOEHLER advised CHIODO that the sign was offensive and that he had received complaints regarding it.

25. CHIODO refused to comply with this demand and advised KOEHLER that he was involved in a peaceful political demonstration in which the sign played an important part.

26. CHIODO also demanded that KOEHLER identify the statute or policy which he was allegedly violating by displaying the sign.

27. KOEHLER did not take any further action against CHIODO on that occasion but again warned him that the sign was illegal.

28. On the afternoon of Tuesday, May 11, 2004, CHIODO was again participating in the regular demonstration at 13th and University and was again holding the subject sign in the course of that demonstration.

29. KOEHLER approached CHIODO on that occasion and again demanded that CHIODO put the sign away so that it would not be visible to passersby.

30. KOEHLER stated that the sign was offensive and that he saw children in cars glance at the sign as they rode by. According to KOEHLER "He [CHIODO] didn't even have to walk away; he just had to put the sign away."

31. At that time KOEHLER was in uniform and acting in his capacity as a police sergeant for the Gainesville Police Department.

32. CHIODO was in a place where he had a lawful right to be, doing something he had a constitutional right to do.

33. KOEHLER had no legal authority to order CHIODO to remove or cease the display of his sign.

34. CHIODO refused several times to put the sign down and again advised KOEHLER that he was engaged in a political demonstration and that the sign was part of his message.

35. KOEHLER then arrested CHIODO and charged him under Chapter 847, Fla.Stat. with exposing minors to obscene materials.

36. KOEHLER also seized CHIODO's sign.

37. The sign was held by the Gainesville Police Department and not returned to Plaintiff until June 7, 2004.

38. KOEHLER transported CHIODO to the Alachua County jail where he was held under charges of displaying obscenity to minors.

39. At the Alachua County Jail, jail personnel placed a colored arm band on CHIODO.

40. CHIODO learned from other prisoners at the jail that the arm band signified that he was a sex offender. CHIODO was extremely fearful that he would be assaulted by other prisoners because of his identification as a sex offender.

41. CHIODO was released from jail on the following day and the charges against him were dropped several days later.

OFFICIAL POLICE POLICY

42. KOEHLER's arrest of CHIODO and seizure of CHIODO's sign was not an isolated event, but was part of an official policy of the Gainesville Police Department and the City of Gainesville to censor and discourage "offensive" speech of an arguably sexual nature through arrests and other police intimidation.

43. This official policy to censor and discourage "offensive" speech of an arguably sexual nature has been the policy of the CITY OF GAINESVILLE for many years dating back to at least the 1980s when a local restaurateur was cited for displaying an "obscene sign" consisting of an image of Leonardo de Vinci's famous study of human male proportions. See, Solomon v. City of Gainesville, 796 F.2d 1464, 1466 (11th Cir. 1986).

44. CHIODO is not the only person arrested under this official policy.

45. In the fall of 2003 an individual by the name of Seth Garrett was arrested by the Gainesville Police Department for marketing an energy drink called Sum Possie (pronounced "Some Pussy") on public areas outside of the University of Florida football stadium. Mr. Garrett hawked this beverage by calling out "Come get some pussy. Get your pussy here." Police arrested and charged Mr. Garrett with disorderly conduct.

46. This policy to censor and discourage "offensive" speech continues to be the policy of the Gainesville Police Department and the City of Gainesville.

47. Commenting two days after Plaintiff's arrest, Corporal Art Adkins, a spokesperson for the Gainesville Police Department told the local newspaper that "[I]f there's offensive material that could be viewed by a child ... we're going take action on it."¹

48. CHIODO's arrest was contrary to well established law but was in keeping with the unconstitutional policies and practices of the Gainesville Police Department and the CITY OF GAINESVILLE.

49. After his arrest, CHIODO made a duplicate of the confiscated sign and displayed that duplicate at his usual twice-monthly political demonstrations. Since the return of his original sign, CHIODO has been able to use that sign as well at his demonstrations.

50. Since CHIODO's arrest, Gainesville Police Department officers have approached Plaintiff on two occasions, advised him that they had received

¹ Quoted in the May 13, 2004, Gainesville Sun available by Internet URL: <http://gainesvillesun.com/apps/pbcs.dll/artikkel?SearchID=73175362434368&Avi s=GS&Dato=20040513&Kategori=LOCAL&Lopenr=205130334&Ref=AR>

complaints concerning his sign and requested identifying information from the Plaintiff, including his social security number.

PUNITIVE DAMAGES

51. KOEHLER did not have a warrant to arrest CHIODO or to seize the sign in question.

52. At no time did KOEHLER seek or obtain a judicial determination that CHIODO's sign was obscene.

53. At no time did KOEHLER seek an opinion from the police staff attorney, or even a superior officer, that CHIODO's sign was obscene.

54. KOEHLER did not have probable cause to believe that CHIODO was committing any crime and no reasonable officer would have concluded that probable cause existed.

55. A reasonable person would have known that KOEHLER's actions were in violation of Plaintiff's clearly established constitutional rights to engage in constitutionally protected speech and association of the kind described in this Complaint.

56. Koehler's actions were malicious and specifically intended to deprive Plaintiff of his First Amendment rights in violation of the United States Constitution. Plaintiff's right to participate in a peaceful political rally, to air his political views and to display signs and message in the context of such a rally are basic rights guaranteed by the Constitution and long recognized in our jurisprudence. Defendant's actions in violating Plaintiff's well-established rights

are completely unacceptable in a constitutional republic and should subject the individual Defendant to punitive damages.

DAMAGES

57. As a direct and proximate result of Defendants' unlawful acts, CHIODO has suffered the loss of rights guaranteed to him under the First, Fourth and Fourteenth Amendments to the United States Constitution.

58. In addition to the loss of constitutional rights, Plaintiff experienced physical and emotional injuries, pain and discomfort, embarrassment and humiliation. Plaintiff's humiliation and hurt was deepened and exacerbated by his identification as a sex offender and his concomitant fear that such identification would lead to abuse and injury while he was incarcerated.

59. Plaintiff's sign was permanently defaced by writing and an evidence bar code affixed to the front of the sign by officers of the Gainesville Police Department.

COLOR OF LAW

60. All of the acts of Defendant KOEHLER and of the CITY OF GAINESVILLE alleged in this Complaint were taken under color of state law or authority.

COUNT I

(Injunctive Relief - City)

Plaintiff realleges and incorporates paragraphs 1 through 60 herein, and further allege as follows:

61. This is an action for permanent injunctive relief against the City of Gainesville brought under this Court's general jurisdiction and pursuant to the applicable portions of Title 28, United States Code.

62. The CITY OF GAINESVILLE continues to maintain the unconstitutional polices and ordinances that are the subject of this Complaint. In particular, the CITY OF GAINESVILLE has instructed its officers to arrest and harass citizens who display "offensive" signs or who engage in "offensive" speech of an arguably sexual nature.

63. Plaintiff is fearful that he will again be arrested for displaying his sign and is still being threatened by police inquiries and harassment whenever he attends his twice-monthly demonstrations.

64. Plaintiff is suffering irreparable injury and is threatened with irreparable injury in the future by reason of the Defendant, CITY OF GAINESVILLE's policies and actions, and Plaintiff has no plain, adequate nor complete remedy to protect his constitutional rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

65. Plaintiff will be unable to engage in speech and political activity that is clearly protected by the First Amendment to the United States Constitution and faces the prospect of criminal prosecution for such activities should an injunction not issue. Deprivation of rights guaranteed under the Constitution is an irreparable injury.

66. The injury to Plaintiff, should the City policy against "offensive" speech not be contravened, exceeds any possible harm to the City. Plaintiff's injury is the loss of a constitutional right. On the other hand, since no city may deprive any person of a right guaranteed by the First Amendment, Defendant will suffer no injury if it is prevented from suppressing Plaintiff's right to freedom of expression. The public has no lawful interest in the enforcement of unconstitutional actions and policies.

67. A permanent injunction will preserve Plaintiff's civil rights and avoid the need to compensate Plaintiff with money damages for violation of his rights.

WHEREFORE, Plaintiff prays for

A. Entry of a permanent injunction forever enjoining Defendant CITY OF GAINESVILLE and its various agents and employees from enforcing its policy of arresting and harassing citizens believed to be engaging in "offensive" speech or displaying "offensive" signs of an arguably sexual nature;

B. An award to Plaintiff of his attorney's fees and costs; and

C. For such other relief as the Court deems proper

COUNT II

(Declaratory Relief - City)

As a second, separate and alternate Count, Plaintiff realleges and incorporates paragraphs 1 through 60 herein, and further alleges as follows:

68. This is an action for declaratory relief pursuant to Title 28, United States Code, Section 2201.

69. Plaintiff is uncertain as to his rights and remedies under the policy of the CITY OF GAINESVILLE to arrest and harass citizens engaging in "offensive" speech or displaying "offensive" signs of an arguably sexual nature. Furthermore, Plaintiff is uncertain as to the propriety of certain actions taken by the CITY OF GAINESVILLE to enforce those policies.

70. Plaintiff believes and herein alleges that the City's policy to arrest and harass citizens engaging in "offensive" speech or displaying "offensive" signs of an arguably sexual nature is unconstitutional on its face and as applied against Plaintiff and others similarly situated.

71. Plaintiff further believes and herein alleges that the actions taken by the City to thwart Plaintiff's ability to disseminate his political ideas violates the First, Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff seeks a declaration as follows:

A. That the CITY OF GAINESVILLE policy to arrest and harass citizens engaging in "offensive" speech or displaying "offensive" signs of an arguably sexual nature is unconstitutional on its face and as applied against Plaintiff and other similarly situated citizens;

B. That the Court grant supplemental relief including, but not limited to an award of Plaintiff's costs and attorney's fees.

COUNT III

(Compensatory Damages – City & Koehler)

72. As a third, separate and alternate Count, Plaintiff realleges and incorporates paragraphs 1 through 60 herein, and further alleges as follows:

73. KOEHLER's arrest of CHIODO and the seizure of the subject sign were unconstitutional and in violation of clearly established law in effect at the time of the arrest.

74. KOEHLER arrested CHIODO pursuant to the CITY OF GAINESVILLE's policy to arrest and harass citizens engaging in "offensive" speech or displaying "offensive" signs of an arguably sexual nature.

75. Notwithstanding the existence of a City policy encouraging such arrests, any reasonable police officer under similar circumstances would have known that CHIODO could not be arrested for engaging in a peaceful political demonstration. Furthermore, any reasonable police officer would have known that CHIODO's sign was not obscene, but rather was fully protected by the Constitution. Furthermore, any reasonable police officer would have known that a judicial determination of probable obscenity was required before the arrest and seizure of the sign would be permitted.

76. As a result of the Defendants' policies and actions, CHIODO has been physically and emotionally injured and has suffered the loss of his constitutional rights.

77. As a result of Defendants' policies and actions, CHIODO's sign has been permanently defaced.

78. CHIODO is entitled to be compensated by Defendants for those injuries.

WHEREFORE, Plaintiff demands the following relief:

A. That the Court enter a judgment for compensatory damages against Defendants and in favor of Plaintiff, to compensate CHIODO for the damages he suffered as a direct and proximate result of being illegally arrested and detained;

B. That the Court enter a judgment for Ten Dollars, as nominal compensatory damages against Defendants and in favor of Plaintiff, to compensate CHIODO for the loss of Plaintiff' rights under the First Amendment to the United States Constitution and for the damage to CHIODO's sign;

C. That the Court award Plaintiff all costs of this action, including a reasonable attorney's fee pursuant to 42 U.S.C. § 1988.

COUNT IV

(Punitive Damages – Koehler)

79. As a fourth, separate and alternate Count, Plaintiff realleges and incorporates paragraphs 1 through 60 herein, and further alleges as follows:

80. When he arrested CHIODO and seized his sign, KOEHLER was motivated by an evil motive or intent: to prevent CHIODO from engaging in political speech which KOEHLER deemed offensive.

81. When he arrested CHIODO and seized his sign, KOEHLER acted in reckless or callous indifference to Plaintiff's federally protected rights.

82. CHIODO is entitled to an award of punitive damages from KOEHLER.

WHEREFORE, Plaintiff demands the following:

A. That the Court enter judgment for punitive damages in favor of CHIODO and against KOEHLER, to punish KOEHLER for his unlawful actions and to deter KOEHLER and others from engaging in the same or similar acts in the future; and

B. That the Court award CHIODO all costs of this action, including a reasonable attorney's fee pursuant to 42 U.S.C. § 1988.

COUNT V

(False Arrest – State Law Claim - Koehler)

83. As a fifth, separate and alternate Count, Plaintiff realleges and incorporates paragraphs 3 through 60 herein, and further alleges as follows:

84. This is an action for damages brought under the laws of the State of Florida and based on the illegal arrest and detention of Plaintiff.

85. KOEHLER did not have a warrant or Court order authorizing Plaintiff's arrest or detention.

86. KOEHLER had no legal basis to physically detain and arrest the Plaintiff and he knew or should have known that the detention and arrest was without legal basis.

87. KOEHLER had no probable cause to believe that Plaintiff had committed any crime.

88. A reasonable police officer in similar circumstances could not have believed that Plaintiff's protected speech constituted a crime or breach of the peace.

89. Plaintiff was detained and arrested against his will.

90. Plaintiff has suffered damages as a direct and proximate result of his illegal arrest and detention, including loss of his freedom, physical discomfort, pain and suffering, fear of physical assault, humiliation and embarrassment.

91. KOEHLER arrested Plaintiff because KOEHLER, and others, disagreed with the content of Plaintiff's speech and not because the Plaintiff was violating any law or otherwise breaching the peace.

92. KOEHLER acted intentionally and maliciously with the express intention of depriving Plaintiff of his freedom and of his civil liberties.

93. Plaintiff is entitled to punitive damages to punish KOEHLER for his unlawful actions and to deter KOEHLER and others from engaging in the same or similar acts in the future.

WHEREFORE, Plaintiff demands judgment against KOEHLER for compensatory and punitive damages together with the costs of this action and such other relief as the Court may deem just.

COUNT VI

(False Imprisonment – State Law Claim – City & Koehler)

94. As a sixth, separate and alternate Count, Plaintiff realleges and incorporates paragraphs 3 through 60 herein, and further alleges as follows:

95. This is an action for damages brought under the laws of the State of Florida and based on the illegal arrest and detention of Plaintiff.

96. KOEHLER did not have a warrant or Court order authorizing Plaintiff's arrest or detention.

97. KOEHLER had no legal basis to physically detain and arrest the Plaintiff and he knew or should have known that the detention and arrest were without legal basis.

98. KOEHLER had no probable cause to believe that Plaintiff had committed any crime.

99. A reasonable police officer in similar circumstances could not have believed that Plaintiff's protected speech constituted a crime or breach of the peace.

100. The CITY, through its agents, was informed of Plaintiff's arrest, of the underlying actions which led to his arrest and of the nature of the charges against Plaintiff.

101. At that point the CITY, and its agents, knew or should have known that there was no basis to detain and imprison the Plaintiff.

102. The CITY ratified and approved KOEHLER's decision to arrest and incarcerate the Plaintiff.

103. At the CITY's direction and with the CITY's knowledge and approval, KOEHLER transported Plaintiff to the Alachua County Jail where Plaintiff was held in custody until the following day.

104. Plaintiff was imprisoned against his will.

105. Plaintiff has suffered damages as a direct and proximate result of his illegal arrest and detention, including loss of his freedom, physical discomfort, pain and suffering, fear of physical assault, humiliation and embarrassment.

106. KOEHLER arrested Plaintiff because KOEHLER, and the CITY, disagreed with the content of Plaintiff's speech and not because the Plaintiff was violating any law or otherwise breaching the peace.

107. The CITY directed that Plaintiff be imprisoned because Plaintiff's political speech violated the City's policy to censor and discourage "offensive" speech of an arguably sexual nature.

108. KOEHLER and the CITY acted intentionally and maliciously with the express intention of depriving Plaintiff of his freedom and of his civil liberties.

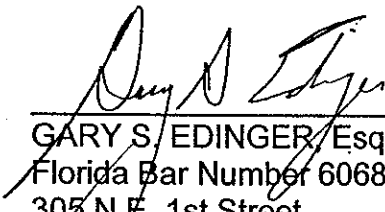
109. Plaintiff is entitled to punitive damages to punish KOEHLER for his unlawful actions and to deter KOEHLER and others from engaging in the same or similar acts in the future.

WHEREFORE, Plaintiff demands judgment against KOEHLER for compensatory and punitive damages, and against the CITY for compensatory damages, together with the costs of this action and such other relief as the Court may deem just.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable as a matter of right.

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DECLARATION

(28 U.S.C. § 1746)

I, CHARLES CHIODO, do declare as follows:

1. I am the Plaintiff named in this Complaint.
2. I have read the foregoing Complaint, and all of the facts alleged in the Complaint are true and correct.
3. I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 6TH, 2004.


CHARLES CHIODO

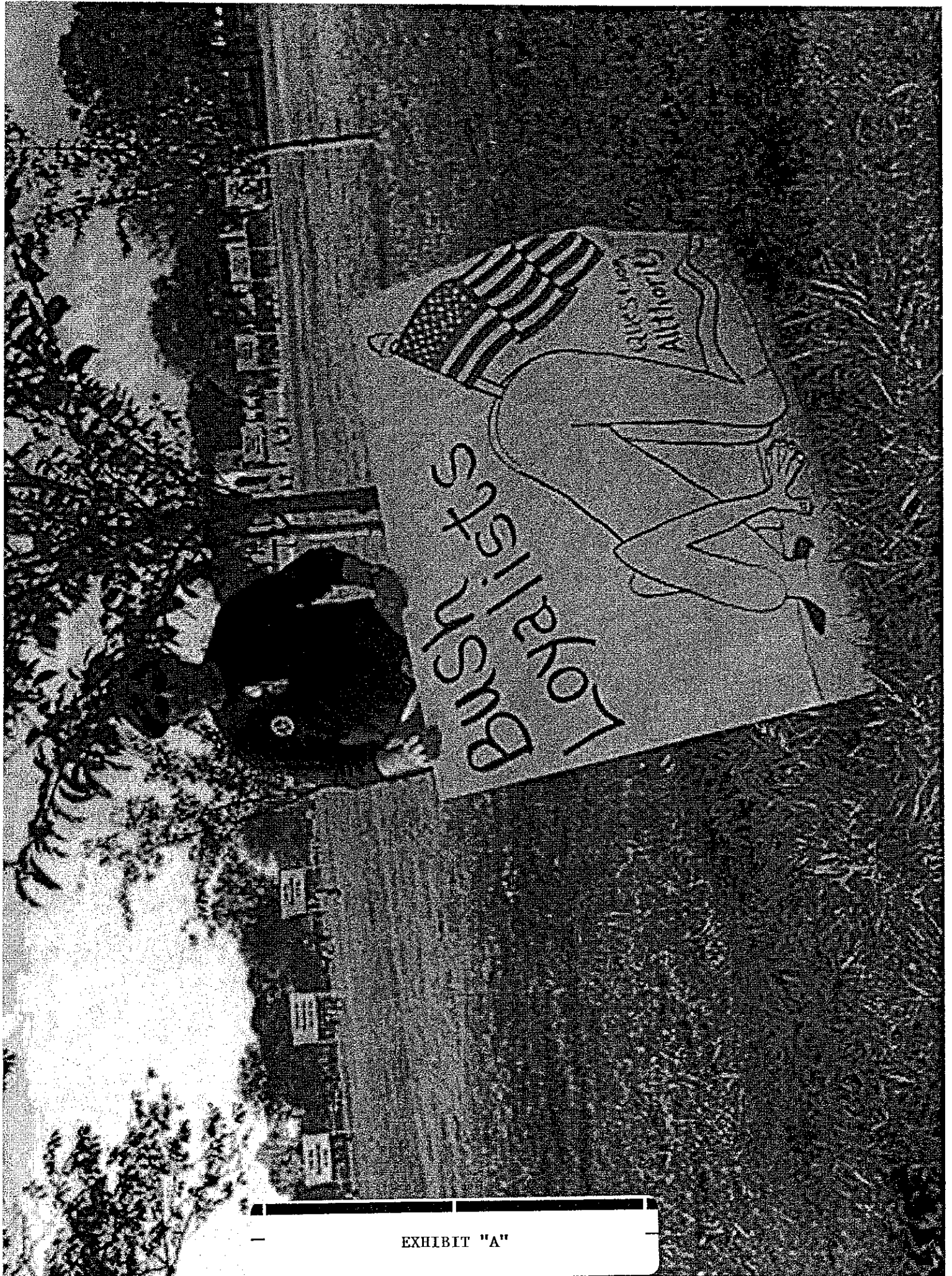


EXHIBIT "A"