

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

KAREN CABANAS VOSS

Plaintiff,

vs.

No. 4:13-cv-10106

CITY OF KEY WEST, FLORIDA

Defendant.

VERIFIED COMPLAINT

Plaintiff KAREN CABANAS VOSS sues Defendant CITY OF KEY WEST, FLORIDA, and alleges as follows:

INTRODUCTION

1. In 1999, Defendant City of Key West instituted a policy that subjects all applicants for employment with the City to suspicionless mandatory drug testing, based on its asserted interest in “the safe, effective, and efficient delivery of public services.” Those applicants who refuse to allow their prospective employer to intrude into one of their most private personal activities and provide a requested urine sample are disqualified from City employment.

2. Karen Cabanas Voss applied and received an offer to become the City’s Recycling Coordinator. The City required her to submit to a drug test

pursuant to its Mandatory Drug Testing Policy. When she argued that the City's demand for her urine without any suspicion that she uses drugs—and despite the fact that the Recycling Coordinator is not a safety-sensitive job—violated the Constitution, the City refused to change its policy. Because Voss did not submit to suspicionless urinalysis pursuant to the Mandatory Drug Testing Policy, the City revoked her job offer. This revocation, based solely on her refusal to submit to a suspicionless drug test, violates the Fourth Amendment, which protects individuals from intrusive searches without any suspicion and ensures a sphere of personal autonomy and bodily integrity. Voss seeks to vindicate her rights under the Fourth Amendment, have the City's Mandatory Drug Testing Policy declared unconstitutional, and be made whole for the violation of her constitutional rights.

JURISDICTION AND VENUE

3. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, for violation of her rights under the Fourth and Fourteenth Amendments to the Constitution of the United States. Plaintiff seeks monetary damages and declaratory and injunctive relief.

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391. The City resides in this district, and the unconstitutional practices that give rise to the Complaint occurred in the City of Key West, Monroe County, Florida.

PARTIES

6. Defendant City of Key West, Florida (hereinafter “the City” or “Defendant”), is a municipality organized and existing under the laws of the State of Florida and located in Monroe County, Florida. Under Florida law, it has the power to sue or be sued. *See* Art. VIII, § 2(b), Fla. Const.; § 166.021, Fla. Stat.

7. Plaintiff Karen Cabanas Voss (hereinafter “Plaintiff” or “Voss”) resides in Key West and applied for and received an offer of employment as the City’s Solid Waste Coordinator, which was subsequently revoked by the City because Voss did not submit to a suspicionless drug test.

FACTUAL ALLEGATIONS

8. On June 2, 1999, the City adopted its Drug-Free Workplace Policy (hereinafter “Mandatory Drug Testing Policy”), a true and accurate copy of which is attached as Exhibit 1. Pursuant to this policy, which authorizes various types of employment drug testing, the City subjects all applicants for employment to a drug test. Ex. 1 at 2. All applicants, from those seeking desk jobs and public relations positions to those who carry firearms, must submit to urinalysis without individualized suspicion of drug use and without consideration of whether the

position is safety-sensitive. Refusal to submit to drug testing will result in the applicant being denied the job. *Id.*

9. Separate from the testing of applicants, the Mandatory Drug Testing Policy also authorizes mandatory testing of particular groups of employees, limited to certified firefighters, sworn police officers, and commercial drivers. *Id.* at 4-5. Although the Recycling Coordinator position offered to Voss does not fall within these categories providing for mandatory drug testing of employees, there is no similar limitation for mandatory drug testing of applicants.

10. In December 2012, Voss applied for the position of Solid Waste Coordinator for the City. The Solid Waste Coordinator (hereinafter “Recycling Coordinator”) is a marketing and planning position whose primary function is to encourage those in the City to increase their participation in recycling programs. According to the job description, a true and accurate copy of which is attached as Exhibit 2, “[e]xcellent communications skills are essential.” Ex. 2 at 1. The Recycling Coordinator creates and disseminates educational materials to the public, works with special events organizers to facilitate recycling participation, does community presentations and participates in environmental education events, and maintains updated public information about recycling. In addition, the Recycling Coordinator develops environmental action plans, collects and analyzes data about local recycling rates, and performs other planning and research tasks for

the City's solid waste facility. Apart from these responsibilities, the Recycling Coordinator occasionally relieves the Transfer Station Manager when the manager is on leave.

11. According to the job description, the equipment used by the Recycling Coordinator consists of general office equipment, including a personal computer and software, calculator, fax machine, copy machine, and other general office equipment. *Id.* The required skills for applicants to the position include knowledge of recycling and waste practices, public relations and marketing strategies, and data processing and computer software, as well as the ability to develop comprehensive program plans, experience in customer service, and the ability to operate an ordinary motor vehicle. *Id.* at 2. As it failed to include any mention in its job description, the City does not expect the Recycling Coordinator to operate heavy machinery or possess the skills to do so. *Id.*

12. The job posting contains no notice that drug testing is required for applicants. *Id.*

13. On or about January 14, 2013, Voss interviewed for the Recycling Coordinator position with City officials. The interview focused almost entirely on Voss's communication skills and management experience. There was no mention of any safety-sensitive tasks to be carried out by the Recycling Coordinator.

14. On or about January 28, a City official called Voss and offered her the job. He told her that Human Resources would contact her after checking her references and completing her paperwork.

15. After the City found Voss's references satisfactory, Human Resources called her to the City's office on or about February 5. There, she was given a copy of the City's Mandatory Drug Testing Policy, asked to sign a drug-testing ID form, and instructed to take the drug test.

16. The only reason the City requested Voss's urine sample was because of its Policy requiring all job applicants to submit to a drug test. The City had no individualized suspicion that Voss used or was illicitly using drugs.

17. Voss instead went to the City Attorney's Office to voice her concern that the City's Policy is unconstitutional. The attorney with whom she spoke asked her to send him any materials in support of her argument.

18. The next day, Voss emailed a copy of the 2012 Drug Free Workplace Act, codified at § 440.102, Fla. Stat, to the City Attorney's office. The statute sets out standards that employers must adopt in order to receive a discount on their workers' compensation programs. § 440.102(2), Fla. Stat. Among these are drug testing of job applicants, limited to those in "special-risk" positions or "mandatory-testing positions." Special-risk positions consist of certified firefighters and sworn

police officers. § 440.102(1)(p), Fla. Stat. A mandatory testing position for purposes of a discount on the workers' compensation programs is a job that:

requires the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with detainees in the correctional system, work with confidential information or documents pertaining to criminal investigations, work with controlled substances, or a job assignment that requires an employee security background check, pursuant to s. 110.1127, or a job assignment in which a momentary lapse in attention could result in injury or death to another person.

§440.102(1)(o), Fla. Stat. The Recycling Coordinator is not a "safety sensitive" position pursuant to either the U.S. Constitution or the workers' compensation program.

19. A couple of days later, Voss also emailed a copy of *Baron v. City of Hollywood*, 93 F. Supp. 2d 1337 (S.D. Fla. 2000), to the City Attorney's office. The case holds that a city's across-the-board policy of drug testing all of its job applicants violates the Fourth Amendment. *Id.* at 1342. And she expressed in her email, "I hope this helps resolve this issue, as I am very much looking forward to working for the City in this new position." This did not resolve the issue, as the City did not change its Policy.

20. Voss subsequently contacted the City to find out whether it would discontinue its Mandatory Drug Testing Policy, but was informed that the Recycling Coordinator job was being considered a mandatory testing position

because it involved making presentations to schoolchildren in their classrooms and occasionally filling in at the Transfer Station, where there was heavy machinery.

21. In response, Voss, a lawyer by training, sent a legal memo to the city, a true and accurate copy of which (sans appended cases) is attached as Ex. 3, explaining why the Recycling Coordinator is not a mandatory testing position. First, she noted that being around children at times is not enough to transform a job into a safety-sensitive position unless the individual has *in loco parentis* authority over the children. Ex. 3 at 1. She also pointed out that the Recycling Coordinator was to fill in for the Transfer Station manager only on occasion when the manager was on leave; the equipment to be used by the Recycling Coordinator is only routine office equipment; and the Transfer Station had no safety policies or requirements that employees wear protective gear of any kind. *Id.* These facts belie the notion that the Recycling Coordinator poses a “risk to public safety [that] is substantial and real.” (quoting *Baron*, 93 F. Supp. 2d at 1340). Moreover, she noted that the City failed to notify applicants in its job description that the Recycling Coordinator is a mandatory-testing position, in clear violation of § 440.102(3), Fla. Stat. Ex. 3 at 2. Finally, Voss made clear that she was not turning down the job but simply wished to assert her constitutional rights. *Id.* Despite these arguments, the City did not alter its position.

22. On or about February 28, City officials informed Voss that because she had refused to take the drug test pursuant to its Mandatory Drug Testing Policy, she was disqualified from becoming the Recycling Coordinator. Consequently, the City had revoked her job offer and offered the position to another applicant.

23. Voss has suffered and will continue to suffer irreparable injury as a result of the City's revocation of her job offer based on her refusal to submit to drug testing pursuant to its unconstitutional Mandatory Drug Testing Policy. Unless restrained by this Court, the City will not hire Voss as the Recycling Coordinator or in a comparable position with all of the derivative benefits or discontinue its unconstitutional Mandatory Drug Testing Policy to which Voss would then be subject. Voss has no adequate remedy at law.

24. Voss has suffered and will continue to suffer an injury as a result of the City's Mandatory Drug Testing Policy, its revocation of her job offer, and refusal to hire her as the Recycling Coordinator. She has been disqualified from the position for asserting her Fourth Amendment rights. Although Voss is currently self-employed as a tour company operator and website designer, neither of these ventures has been profitable of late. She remains otherwise unemployed and consequently has lost income that, but for the City's Mandatory Drug Testing Policy, she would have earned.

25. The City acted and threatens to continue acting under color of state law at all times alleged in this complaint.

COUNT I: Freedom from Unreasonable Searches

26. Plaintiff realleges and incorporates by reference all of the foregoing allegations.

27. The City has deprived, and continues to deprive, Voss of the right to be free from unreasonable searches as guaranteed by the Fourth Amendment (and made applicable to the City through the Fourteenth Amendment) of the U.S. Constitution. The City's enforcement of its Mandatory Drug Testing Policy, its revocation of Voss's job offer for refusing to submit to its Policy by providing a urine sample, and its refusal to hire Voss as the Recycling Coordinator with all of the derivative benefits while discontinuing its Mandatory Drug Testing Policy is the cause in fact of the constitutional deprivation.

28. The City's Mandatory Drug Testing Policy of subjecting all applicants—without regard to their job responsibilities—to a suspicionless, random drug testing regime is unconstitutional upon its face and as applied to Voss.

29. No concrete danger or special need necessitates subjecting Voss or other office workers to the City's Random Drug Testing Policy.

30. This constitutional violation may be redressed pursuant to 42 U.S.C. § 1983.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests for the following relief:

A. An order declaring the City's Mandatory Drug Testing Policy, which requires all applicants for City employment without regard to job responsibilities or tasks on a suspicionless basis to provide urine samples for drug testing, violates, facially and as-applied, the Fourth and Fourteenth Amendments to the U.S. Constitution;

B. An order permanently enjoining the City from enforcing the Mandatory Drug Testing Policy against Voss to the extent that she applies or has applied for the Recycling Coordinator job or other non-safety-sensitive positions;

C. An order mandating the City hire Voss as the Recycling Coordinator or in a comparable position with all of the derivative benefits that she would have had if her job offer had not been withdrawn;

D. An order directing the entry of judgment in Plaintiff's favor and against the City in the amount necessary to compensate Voss for lost income, benefits, and any other additional sums necessary to make her whole;

E. An award of monetary damages for the violation of Voss's constitutional rights;

F. An award to Voss of reasonable attorneys' fees, litigation expenses, and costs incurred in connection with this action from the Defendant pursuant to 42 U.S.C. § 1988;

G. An order retaining the Court's jurisdiction of this matter to enforce the terms of the Court's orders; and

H. Such further and different relief as is just and proper or that is necessary to make Plaintiff whole.

PLAINTIFF'S VERIFICATION OF FACTUAL ALLEGATIONS

I declare under penalty of perjury that the foregoing factual allegations are true and correct.

Executed in Key West, Florida, this 7 day of May, 2013.



Karen Cabanas Voss

Dated: May 14, 2012

Respectfully Submitted,

/s/Shalini Goel Agarwal

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