

**IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PHILLIP LETTEN,

Plaintiff,

Hon.

Case No.

vs.

SCOTT HALL, Detroit Police Department Police
Officer, in his individual capacity,

JURY TRIAL DEMANDED

Defendant.

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Daniel S. Korobkin (P72842)
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COMPLAINT

INTRODUCTORY STATEMENT

1. This is a federal civil rights action brought to protect the right of a political activist to distribute pamphlets on a public walkway without fear of arrest, prosecution, retaliation, or interference by the police.
2. On July 31, 2009, Plaintiff Phillip Letten was in the City of Detroit to advocate with the non-profit organization Vegan Outreach to end animal cruelty. He and several other activists stood on a public walkway outside of Comerica Park and distributed informational booklets to passers-by as they left a concert. Letten remained on the walkway, and his peaceful advocacy efforts neither impeded the flow of pedestrian traffic nor created any other type of disturbance. Nevertheless, a police officer ordered Letten to stop leafleting because he did not have a permit and then charged him with a crime for allegedly violating an unspecified Detroit city ordinance.
3. In this action, Letten alleges violations of his rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983. He also brings a supplemental state-law claim for malicious prosecution.
4. Letten seeks a declaration that his rights were violated, damages and other appropriate relief.

JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking redress for the deprivation of rights secured by the United States Constitution. Jurisdiction over the supplemental state-law claim is proper under 28 U.S.C. § 1367.

6. Venue is proper under 28 U.S.C. § 1391(b)(2) because the events giving rise to the claims asserted occurred in Wayne County, which is within the Eastern District of Michigan.

PARTIES

7. Plaintiff Phillip Letten is 22 years old and a resident of Howell, Michigan. He holds a bachelor's degree in political science from Michigan State University and is a political activist who has been dedicated to the effort to end animal cruelty for several years.
8. Defendant Scott Hall, is, or was at all times relevant to this Complaint, a police officer in the Detroit Police Department. He is being sued in his individual capacity.

FACTS

9. Letten's involvement in animal rights advocacy began when he adopted a vegetarian diet during his final year in high school after reading a Vegan Outreach pamphlet that changed his perspective on the treatment of animals.
10. When he enrolled at Michigan State University, Letten joined a student organization called Students Promoting Animal Rights. It was here that Letten learned about the efficacy of Vegan Outreach's focus on public education.
11. Letten soon began to hand out informational pamphlets for Vegan Outreach on campus.
12. Prior to July 31, 2009, Letten never had any problems with police, security guards, or members of the general public while leafleting.

13. On July 31, 2009, the popular traveling music festival, the Warped Tour, was hosted by Comerica Park in downtown Detroit.
14. Letten learned about an opportunity to distribute Vegan Outreach pamphlets on the public walkways outside of the Warped Tour through Students Promoting Animal Rights and decided to participate.
15. When Letten arrived downtown on the day of the concert, he was first instructed to prevent confrontations, to remain on public walkways and to avoid impeding the flow of pedestrian traffic. He then began to distribute Vegan Outreach's pamphlets while standing on the public walkway between Woodward and Comerica Park.
16. The Vegan Outreach pamphlet was solely for informational purposes and was not a business solicitation. Its contents described the mistreatment of animals in modern animal agriculture and suggested healthy alternative food options for vegans and vegetarians.
17. For approximately two hours, Letten peacefully distributed literature to the steady stream of individuals who were exiting the concert without any disturbances. He did not obstruct pedestrian traffic and no one complained about his presence.
18. At approximately 7p.m., Letten moved further down the walkway to retrieve a few pamphlets that some pedestrians had dropped on the ground. When he returned to his original location, he saw Officer Hall speaking to another Vegan Outreach volunteer.
19. Upon information and belief, Officer Hall was not advised by anyone of a disruption or disturbance caused by the Vegan Outreach volunteers' presence, nor did any such disruption or disturbance occur.

20. Officer Hall ordered Letten and several other Vegan Outreach volunteers to stop pamphleting. Letten immediately stopped leafleting. He then explained to Defendant Hall that he was on a public walkway.
21. Officer Hall stated that there was a city ordinance that required Letten to obtain a permit in order to distribute leaflets.
22. When Letten asked if he could see this ordinance, Officer Hall said “no,” and then demanded that Letten give him his driver's license so he could write him a ticket.
23. In response, Letten asked if he was being detained. Officer Hall only replied, “give me your license.”
24. Letten again asked if he was being detained, and Officer Hall again asked for Letten's license.
25. Eventually, Officer Hall stated that Letten was being detained and ordered him to provide his license. Letten immediately complied.
26. Officer Hall wrote and signed a misdemeanor complaint against Letten and handed Letten a copy.
27. According to the complaint Officer Hall handed to Letten, Letten had violated a city "license ordinance" described only as "Distribute flyers w/o permit."
28. The complaint does not contain a numerical citation to the provision of the city code that Letten allegedly violated.
29. Although Officer Hall ordered several other Vegan Outreach volunteers to stop distributing pamphlets, Letten was the only one who questioned Hall's authority to stop the leafleting and Letten was the only individual whom Hall ticketed for distributing flyers without a permit.

30. Once Letten received his ticket, he and the other Vegan Outreach volunteers packed up their belongings and went home.
31. As a result, they lost the opportunity to express their views to several thousand individuals who exited Comerica Park at the conclusion of the concert.
32. The misdemeanor complaint that Officer Hall eventually filed in 36th District Court materially differed from that which Officer Hall originally provided to Letten.
33. While the misdemeanor complaint Officer Hall handed to Letten on the street did not cite a provision of the Detroit City Code, the complaint filed in court included a citation to Detroit City Code § 3-2-1.
34. Furthermore, while the complaint Letten received on the street alleged only that Letten had distributed flyers without a permit, the complaint filed in court also alleged that he had refused to comply with an “order to stop” and had interfered with pedestrian traffic.
35. Detroit City Code § 3-2-1 provides:
 - a. It shall be unlawful for any person to distribute or cause to be distributed any commercial handbills, circulars or advertising cards that solicit patronage for goods, wares, merchandise, services, real estate or any other thing within the Loop or Loop District, which is defined in section 1-1-2 of this Code as the area bounded on the south by the south line of East Jefferson Avenue and West Jefferson Avenue; on the east by the east line of St. Antoine Street; on the north by the north line of Columbia Street; and on the west by the west line of First Street.
 - b. The provisions of this section shall not apply to established newspapers or periodicals or to noncommercial circulars, handbills, or cards which do not solicit patronage for profit.
36. Letten did not distribute any commercial pamphlets on July 31, 2009. The Vegan Outreach pamphlets that he distributed were noncommercial, educational materials that did not solicit patronage for profit.

37. At no time did Letten refuse to comply with a police officer's order to stop leafleting.
38. At no time did Letten interfere in any way with pedestrian traffic.
39. Upon information and belief, Officer Hall altered the misdemeanor complaint himself after he realized that it is not a crime to distribute flyers without a permit.
40. Both the original and the altered misdemeanor complaint differed yet again from the set of claims recorded in the 36th District Court's official register of actions, where Letten was charged with allegedly soliciting trade in a public place in violation of Detroit City Code § 50-1-13.
41. Detroit City Code § 50-1-13 provides:

No merchant, storekeeper, shopkeeper, commercial vehicle operator or any other owner or operator of any business, calling or pursuit shall, by himself under his direction, stand or remain in any public street or in any doorway or other place adjacent to a public street and, by calls, cries, ringing of bells, blowing of horns or by the operation of any noise making, noise producing or noise amplifying device or by reaching out into the street and using force, solicit passers-by to enter into any store, shop, place of business or place of commercial pursuit or any motor vehicle carrying passengers for hire; nor shall any person stand or remain in any public street or any doorway or other place adjacent to a public street and seek by any of the means or methods heretofore enumerated to detain passers-by or attract their attention or trade to such store, shop, place of business or place of commercial pursuit or to any motor vehicle carrying passengers for hire.
42. Letten is not a merchant, storekeeper, shopkeeper, commercial vehicle operator or any other owner or operator of any business, calling or pursuit.
43. Additionally, at no time did Letten detain pedestrians or solicit them to enter into, or attract their attention toward, a place of commercial business or a motor vehicle carrying passengers for hire.

44. On the basis of Officer Hall's misdemeanor complaint, Letten was arraigned in 36th District Court on September 1, 2009. Personal bond was set at \$500 and a pre-trial hearing was scheduled for November 18, 2009.
45. Upon information and belief, no prosecuting attorney independently review Officer Hall's criminal complaint before Letten was sent a notice to appear for arraignment or before he was arraigned.
46. The proceedings and the charges and accusations of Officer Hall were malicious and without probable cause, and after Letten's arraignment, the city attorney agreed to dismiss the case with prejudice.
47. On November 17, 2009, the charges against Letten were ordered dismissed with prejudice.
48. Letten was forced to endure the embarrassment and humiliation of being detained, chastised and wrongly ticketed by Officer Hall on a public street in front of numerous pedestrians. Because Officer Hall ordered Letten to stop pamphleting before the concert was finished, Letten lost the opportunity to express his views to several thousand individuals who exited Comerica Park at the end of the night. Letten lives with his parents, and their initial expressions of anger and disappointment in response to an official misdemeanor complaint from a police officer added to his already significant anxiety and mental anguish about the pending charges. His pecuniary damages include the day of lost wages when he was forced to miss work for his arraignment, as well as his travel costs to attend the same.

COUNT ONE

VIOLATION OF THE FIRST AMENDMENT

**RIGHT TO FREEDOM OF SPEECH
(RIGHT TO DISTRIBUTE LEAFLETS IN A PUBLIC FORUM)**

49. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech, and the First Amendment is incorporated against the states by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.
50. The First Amendment protects the right to distribute leaflets on a public walkway.
51. Officer Hall, acting under the color of state law, violated Letten's clearly established rights under the First Amendment by ordering him to stop distributing pamphlets on a public walkway, detaining him for distributing pamphlets on a public walkway and charging him with a crime for distributing pamphlets on a public walkway.

COUNT TWO

**VIOLATION OF THE FIRST AMENDMENT
RIGHT TO FREEDOM OF SPEECH
(RETALIATION)**

52. The freedom to express disagreement with a police officer without fear of reprisal based on that expression is protected by the First Amendment.
53. Officer Hall, acting under color of state law, violated Letten's clearly established rights under the First Amendment because Hall's decision to detain him and charge him with a crime was motivated at least in part by the fact that Letten questioned his authority to prevent him from distributing pamphlets on a public walkway, which is constitutionally protected speech.

COUNT THREE

VIOLATION OF THE FOURTH AMENDMENT

**RIGHT TO BE FREE FROM UNREASONABLE
SEARCHES AND SEIZURES
(DETENTION WITHOUT REASONABLE SUSPICION/PROBABLE CAUSE)**

54. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures, and the Fourth Amendment is incorporated against the states by the Fourteenth Amendment. Persons violating the Fourth Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.
55. Officer Hall, acting under color of state law, violated Letten's clearly established right to be free from unreasonable seizures by detaining him without reasonable suspicion that he had committed any offense and without probable cause that he had committed any offense.

COUNT FOUR

**VIOLATION OF THE FOURTH AMENDMENT
RIGHT TO BE FREE FROM UNREASONABLE
SEARCHES AND SEIZURES
(MALICIOUS PROSECUTION)**

56. The Fourth Amendment to the United States Constitution prohibition of unreasonable seizures encompasses the right to be free from malicious prosecution.
57. Officer Hall, acting under the color of state law, violated Letten's clearly established right to be free from unreasonable seizures by unlawfully and maliciously causing a criminal prosecution to be instituted against him.
58. Officer Hall lacked probable cause to initiate criminal proceedings against Letten; a reasonable person in Officer Hall's position would have known that the facts and circumstances were insufficient to justify a reasonable belief that Letten had

committed any offense; the criminal proceedings ended in Letten's favor; and the criminal proceedings were the result of malice by Officer Hall.

COUNT FIVE

**VIOLATION OF COMMON LAW AND M.C.L. § 600.2907
MALICIOUS PROSECUTION**

59. In Michigan, malicious prosecution is recognized under the common law and by M.C.L. § 600.2907.

60. Officer Hall violated Letten's right to be free from malicious prosecution under common law and M.C.L. § 600.2907.

61. Specifically, Officer Hall caused the criminal proceedings against Letten to be instituted; the proceedings terminated in Letten's favor; there was no probable cause to support the prosecution; and Officer Hall acted with malice.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. assert jurisdiction over this matter;
- b. declare that Letten's rights under the First, Fourth and Fourteenth Amendments were violated by Officer Hall;
- c. declare that Letten's rights under M.C.L. § 600.2907 were violated by Officer Hall;
- d. award Letten compensatory damages for the violation of his constitutional rights and treble damages for malicious prosecution under M.C.L. § 600.2907;
- e. award costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- f. grant or award other such relief that this Court deems just and proper.

Respectfully submitted,

/s/Jessie J. Rossman_____

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Dated: June 2, 2010

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

Respectfully submitted,

/s/Jessie J. Rossman_____

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