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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

GARY FORMHALS,

Plaintiff,

v.

WASHINGTON STATE PARKS AND
RECREATION COMMISSION; DIANA
DUPUIS, in her official capacity as Director
of the Washington State Parks and
Recreation Commission; ANDREW
SOUTHARD, in his individual and official
capacities; PAUL RUPPERT, in his
individual and official capacities,

Defendants.

CASE NO. _____

COMPLAINT

Plaintiff Gary Formhals brings this action for damages and declaratory and injunctive relief in order to vindicate his rights under the First Amendment to the U.S. Constitution. Formhals was constructively discharged as a volunteer and employee of the Washington State Parks and Recreation Commission. Formhals was ordered to remove and/or cover bumper stickers on his personal vehicle while parked on park property pursuant to a speech-restricting, overbroad, and vague policy governing “Public Contact/Communication” of park volunteers.

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I. NATURE OF THE ACTION

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2 1. Gary Formhals is a former volunteer and employee of Fort Casey State Park, one
3 of the area parks for Central Whidbey Area State Parks.

4 2. Formhals would drive his personal vehicle to Fort Casey State Park as a volunteer
5 and employee. That vehicle displays several bumper stickers, many of which are political in
6 nature.

7 3. Upon information and belief, and only after an unidentified individual complained
8 about the bumper stickers in late March or early April 2023, Formhals was ordered by
9 Defendants to either cover or remove his bumper stickers pursuant to park policy.

10 4. Not wishing to self-censor his personal speech, Formhals quit his positions as a
11 volunteer and employee.

II. PARTIES

12 5. Gary Formhals resides in Clinton, Washington.

13 6. Washington State Parks and Recreation Commission is a public agency of the
14 State of Washington.
15

16 7. Diana Dupuis is the Director of the Washington State Parks and Recreation
17 Commission and manages Washington’s 124 parks and properties. Dupuis is sued in her official
18 capacity.

19 8. Andrew Southard is a Park Ranger for the Central Whidbey State Parks – a
20 collection of four parks under the Washington State Parks and Recreation Commission. Southard
21 is sued in his official and individual capacities.

22 9. Paul Ruppert is a Volunteer Program Specialist with the Washington State Parks
23 and Recreation Commission. Ruppert is sued in his official and individual capacities.

III. JURISDICTION AND VENUE

10. This civil rights action pursuant to 42 U.S.C. § 1983 raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments.

11. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

12. This Court has authority to award the requested declaratory relief under 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57; the requested injunctive relief under 28 U.S.C. § 1343 and Federal Rule of Civil Procedure 65; and costs and attorneys’ fees under 42 U.S.C. § 1988.

13. Venue is proper in the United States District Court for the Western District of Washington under 28 U.S.C. § 1391(2) because a substantial part of the events giving rise to Plaintiff’s claims occurred within this district.

IV. ALLEGATIONS OF FACT

14. Fort Casey State Park is one of four Central Whidbey Area State Parks and is located on Whidbey Island in Island County, Washington.

15. Formhals is a retired U.S. Navy “Seabees” Chief “Seabees” chief and retired general contractor who has volunteered at the Fort Casey Public Park (“Park”) for more than ten years. His volunteer duties included checking in park visitors, answering questions, and monitoring camp sites. In exchange for his volunteer duties, Gary was allowed to camp for free in the park for three months each spring and fall.

16. In addition to volunteering his services at the Park, Formhals was also a part-time employee. As an employee, Formhals worked as an equipment operator/groundskeeper for over six (6) years.

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1 17. Formhals' dedicated work at the Park has received special public recognition. In
2 2019, he was awarded the Award of Excellence and Volunteer of the Year. In his nomination for
3 that award, staff commended Gary "for his service above and beyond the call of duty, his
4 integrity, and his courteous and kind manner with everyone who meets him."

5 18. Formhals has been described as "indispensable." Another Park representative
6 explained, she "do[es]n't know how we would run the park without him [Formhals], to be
7 honest." *State Parks recognizes two Fort Casey volunteers*, Whidbey News-Times (August 27,
8 2019), available at: [https://www.whidbeynewstimes.com/life/state-parks-recognizes-two-fort-](https://www.whidbeynewstimes.com/life/state-parks-recognizes-two-fort-casey-volunteers)
9 casey-volunteers.

10 19. When serving as either a volunteer or employee, Formhals wore a jacket with a
11 state park emblem, or vest or hat. He has never spoken about, nor wore items expressing, his
12 religious or political beliefs to visitors in the Park while fulfilling host or other duties at the Park.

13 20. Formhals drove his personal pickup truck to and from the Park where Formhals
14 volunteered his services and worked as an employee.

15 21. Since 2016, Formhals has displayed several bumpers stickers on the back window
16 of his truck. A true and accurate picture of those stickers is provided below:



1 22. While in the Park and when serving as a volunteer host, Formhals always reverse
2 parked his truck, i.e., with the front of the truck facing out. Accordingly, visitors could not see
3 his stickers in plain view and would have to walk behind his personal campsite in order to view
4 the stickers.

5 23. Similarly, when on duty as an equipment operator, Formhals parked his personal
6 truck behind the mower shed and utilized an official Park vehicle to carry out his job duties
7 throughout the park.

8 24. When parked behind the mower shed, Formhals' truck was not visible to any park
9 visitors.

10 25. At no time prior to April of this year was Formhals ever told to cover or remove
11 his bumper stickers.

12 26. On April 3, 2023, Defendant Ruppert sent an email to Defendant Southard, with
13 the subject line reading: "FW: Please Remove Insurrectionalist [sic] Propaganda from Fort Casey
14 Campground." The body of that email stated in relevant part:

15 Hi Andrew,

16 We received an email from a park visitor who spent last weekend at Fort
17 Casey. They had a complaint about one of your hosts who has a political
18 bumper sticker expressing his opinion that is being prominently displayed
19 on their vehicle. If this is the case, please contact the host and let them know
that the bumper sticker needs to be removed or covered up immediately
while they are in the park hosting. The host's signed 2023 Host Agreement
specifically states:

20 **PUBLIC CONTACT/COMMUNICATION:** Public service is the host's
21 highest priority. Be friendly, honest, courteous, and helpful in all
22 interactions with the public. Be positive about the park, staff, and rules.
23 Harassment, including sexual harassment, is inexcusable for both staff and
volunteers. **Do not express, display, broadcast, distribute or otherwise
communicate to the public any personal opinions, messages or points of
view while performing host duties, wearing the host vest, or while**

1 **occupying the host site. This includes the display of expressive items**
2 **such as stickers, flags, signs, and clothing.**

3 Please educate your host on the importance of not expressing his personal
4 opinions while in the park and how it could have a negative effect on the
5 park and the agency.

6 (Emphasis added.)

7 27. The following day, Defendant Southard responded as follows:

8 Hi Paul-

9 Thanks for passing along the comment. I'm not sure if Gary's stickers
10 would qualify as "prominently displayed." Gary parks his personal truck
11 reversed-in, so the only time someone might see his stickers would be if
12 they were walking through and behind his campsite. I attached some
13 pictures so you can see what the visitor sees from neighboring campsites
14 and the road.

15 If after looking these over we still have a problem, please let me know
16 which of the stickers in the photo he should cover up.

17 Then, when Brett (acting Area Manager) gets back from vacation he can
18 respond to the visitor as is customary with customer comments.

19 28. On April 5, 2023, Defendant Southard met with Formhals and verbally instructed
20 him to cover or remove his stickers from his truck. Southard specifically mentioned the same
21 policy provision contained in Defendant Ruppert's email.

22 29. The Host Agreement containing the policy provision is set forth in the
23 Washington State Parks and Recreation Commission's "Terms and Conditions of Volunteer
24 Service Public Contact/Communication" A true and accurate copy of the Host Agreement is
25 attached hereto.

26 30. Formhals was not aware that the PUBLIC CONTACT/COMMUNICATION
27 provision in the Host Agreement prohibited his private speech and did not interpret the provision

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1 to prohibit him from expressing his private political or other opinions on his personal vehicle as
2 either a volunteer or employee.

3 31. Defendant Southard told Formhals that if he did not comply with the policy, he
4 would no longer be able to serve as a volunteer or employee.

5 32. Not wishing to self-censor his personal, private speech, Formhals quit his
6 positions as a volunteer and employee of the Washington State Parks and Recreation
7 Commission on April 5, 2023.

8 **V. CAUSES OF ACTION**

9 **COUNT I**

10 **Violation of First Amendment Right to Free Speech**

11 33. Plaintiff alleges and incorporates herein by reference all the preceding paragraphs
12 of this Complaint.

13 34. Pursuant to 42 U.S.C. § 1983, Formhals brings this claim against Defendants for
14 acting under color of state law to deprive him of rights secured by the U.S. Constitution.

15 35. The speech expressed through Formhals’s bumper stickers is private speech on a
16 matter of public concern and is fully protected under the First Amendment, which prohibits the
17 government from “abridging the freedom of speech.” This prohibition applies to state and local
18 governments through the Fourteenth Amendment.

19 36. The policy cited by Defendants under which Formhals was constructively
20 discharged as a volunteer and employee is unconstitutional on its face and as applied to
21 Formhals’ display of his private expression.

22 37. The policy cited by Defendants under which Formhals was constructively
23 discharged as a volunteer and employee is unconstitutionally overbroad.

1 38. The policy cited by Defendants under which Formhals was constructively
2 discharged as a volunteer and employee operates as a prior restraint on speech.

3 39. The application of the policy to Formhals' private speech, i.e., the bumper stickers
4 on his personal vehicle, by Defendants was unconstitutional.

5 40. Formhals was retaliated against based on the content of his speech as expressed
6 through his bumper stickers.

7 41. Formhals was retaliated against based on the viewpoint of his speech as expressed
8 through his bumper stickers.

9 **COUNT II**

10 **Violation of the Due Process Clause of the Fourteenth Amendment**

11 42. Plaintiff alleges and incorporates herein by reference all the preceding paragraphs
12 of this Complaint.

13 43. The Due Process Clause of the Fourteenth Amendment to the Constitution
14 requires fair notice. In the context of public employment, employees are entitled to know what
15 conduct is permissible and not permissible. This is especially true in the context of employee
16 speech.

17 44. The PUBLIC CONTACT/COMMUNICATION provision of the "Terms and
18 Conditions of Volunteer Service Public Contact/Communication" is unconstitutionally vague
19 under the Fourteenth Amendment as it does not provide any adequate notice what "expressive"
20 activity is or is not permitted.

21 45. The PUBLIC CONTACT/COMMUNICATION provision of the Host Agreement
22 is unconstitutionally vague under the Fourteenth Amendment as it does not provide any adequate

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1 notice of whether a volunteer can express a private message through a bumper sticker displayed
2 on a personally owned vehicle.

3 **VI. PRAYER FOR RELIEF**

4 Based on the foregoing, Plaintiff, Gary Formhals, respectfully prays that the Court grant
5 judgment as follows:

6 A. That the Court enter a declaratory judgment declaring the actions of the
7 Defendants in suppressing Plaintiff's speech to be unconstitutional;

8 B. That the Court enter a declaratory judgment declaring the "PUBLIC
9 CONTACT/COMMUNICATION" provision of the Washington State Parks and Recreation
10 Commission's "Terms and Conditions of Volunteer Service Public Contact/Communication" is
11 unconstitutional;

12 C. That the Court enter an injunction restraining, prohibiting, and enjoining the
13 Defendants, their agents and employees, and all persons in active concert or participation with
14 them from enforcing or applying the "PUBLIC CONTACT/COMMUNICATION" provision of
15 the Washington State Parks and Recreation Commission's "Terms and Conditions of Volunteer
16 Service Public Contact/Communication";

17 D. That the Court award compensatory damages to Plaintiff according to proof or, in
18 the alternative, award Plaintiff nominal damages in the amount of one dollar;

19 E. That the Court award punitive damages according to proof;

20 F. That the Court award Plaintiff the reasonable costs of this action;

21 G. That the Court award Plaintiff a reasonable award of attorney's fees pursuant to
22 42 U.S.C. § 1988; and

23 H. That the Court award such other relief as the Court deems just.

1 Dated: May 12, 2023

Respectfully submitted,

2 Abigail Southerland*
3 TN Bar No. 026608
4 AMERICAN CENTER FOR LAW
AND JUSTICE

/s/ Peter M. Ritchie
PETER M. RITCHIE, WSBA #41293
MEYER, FLUEGGE & TENNEY, P.S.

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Counsel for Plaintiff Gary Formhals

7 Geoffrey R. Surtees*
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[Redacted]
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12 **Pro hac vice* application pending.

14 **CERTIFICATE OF SERVICE**

16 I hereby certify that on May 12, 2023, the foregoing document was served via electronic
17 filing on all counsel of record in this case.

18 /s/ Peter M. Ritchie
19 Counsel for Plaintiff

[Redacted]
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