

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
Tallahassee Division

ROBERT A. BRAYSHAW,

Plaintiff,

No. 4:09-cv-373

v.

CITY OF TALLAHASSEE, FLORIDA,

Defendant.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the constitutionality of Florida Statute §843.17 which criminalizes the publication of the name and address, or telephone number, of a law enforcement officer under some, but not all, circumstances. Plaintiff Brayshaw was arrested, and prosecuted, under this statute in 2008 after Tallahassee Police Officer Annette Garrett's name and home address were posted on Ratemycop.com, a privately owned company in Los Angeles, California, that "allows registered users to leave written feedback about their interactions with police officers, and rank the officer's service based on three criteria: Professionalism, Fairness and Satisfaction."<sup>1</sup>

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<sup>1</sup> See [http://ratemycop.com/index.php?option=com\\_content&task=view&id=58&Itemid=148](http://ratemycop.com/index.php?option=com_content&task=view&id=58&Itemid=148) (last visited September 18, 2009).

The criminal charges were dismissed, with prejudice, on April 15, 2008, for the State's failure to adhere to the speedy trial requirements of Fla.R.Crim.P. 3.191.

2. Plaintiff Brayshaw has had several opportunities to interact with, and observe, Officer Garrett. As a result of his interaction and observations, Brayshaw is of the opinion that Officer Garrett is rude, abusive and unprofessional. Plaintiff Brayshaw desires to exercise his First Amendment right to inform others of his opinion of Officer Garrett and, as a part of his criticism, would include either her address or phone number or both, truthful information that is otherwise publicly available. Having been prosecuted twice previously under §843.17, Brayshaw reasonably fears arrest and prosecution again if he does so. The statute, therefore, chills Brayshaw's exercise of his rights under the First Amendment.

#### JURISDICTION

3. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of his rights under the First and Fourteenth Amendments to the United States Constitution.

4. 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.

## PARTIES

5. Plaintiff Robert A. Brayshaw is a resident of the City of Tallahassee, Florida.

6. Defendant City of Tallahassee, Florida, is a Florida municipal corporation with the power to sue or be sued. *See* Art. VIII, § 2(b), Fla. Const.; § 166.021, Fla. Stat.

## FACTS

7. Plaintiff Brayshaw first met Officer Annette Garrett in April 2007 during a trespass investigation that lasted until May 2007. Brayshaw found Officer Garrett to be very rude, abusive and unprofessional during the investigation. He filed several complaints with the Tallahassee Police Department regarding Officer Garrett's conduct. Brayshaw was not satisfied with the Departments' response to his complaints.

8. In March and April 2008, a number of comments regarding Officer Garrett (and other Tallahassee Police Officers) were posted on Ratemycop.com.

9. Plaintiff Brayshaw posted a series of comments about Officer Garrett. The postings regarding Officer Garrett were generally critical of her performance as a police officer.

10. Other postings, not written by Brayshaw, also critical of Officer Garrett were posted on the website.

11. Upon information and belief, Officer Garrett posted responses to the postings on Ratemycop.com.

12. One of Plaintiff's postings, on March 31, 2008 (the only posting he made that day) stated:

Annette Pickett Garrett, 47 years old, 7 kids, Single, Divorced Anthony Edward "Tony" Drzewiecki, 38 yo, Home: 1929 Queenswood Drive, Tallahassee, Florida 32303-7123, Home Est. \$167,500. Built in 1973, 1669 square feet. Cingular Cell-Phone: (850) 228-4567, E-Mail Address: AGARRETIOO@Comcast.net.

This personal information regarding Officer Garrett was truthful and, at the time, publicly available. Plaintiff obtained this information through searches on the Internet. In fact, Officer Garrett's name and address are still publicly available on the Leon County Clerk of Court's website at:

[http://cvweb.clerk.leon.fl.us/cvimage/official\\_records/download\\_document.asp?book=3644&page=02266&type=OR&subnet=](http://cvweb.clerk.leon.fl.us/cvimage/official_records/download_document.asp?book=3644&page=02266&type=OR&subnet=) (last visited September 18, 2009).

13. Following the posting of Officer Garrett's name, address and phone number, the Tallahassee Police Department opened an investigation, subpoenaed records from Ratemycop.com and Plaintiff's internet provider, and arrested Plaintiff in May 2008, charging him with a violation of Fla. Stat. §843.17 which states:

**Publishing name and address of law enforcement officer.**

– Any person who shall maliciously, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal

performance of his or her duties, publish or disseminate the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

14. Plaintiff was prosecuted twice for violation of the statute.

15. At all times relevant to this Complaint, the City of Tallahassee had adopted Fla. Stat. §843.17 as its own law. *See* Code of Ordinances, Sec. 12-1 (“Adoption of State Misdemeanors”).<sup>2</sup>

16. On December 9, 2008, after a jury had been selected for a trial on the criminal charge, the State dismissed the charge by entering a Nolle Prosequi. However, the charge was re-filed less than two weeks later.

17. On April 15, 2009, the charge was dismissed with prejudice on account of the State’s failure to comply with Fla. R. Crim. P. 3.191 (speedy trial requirements).

18. Plaintiff believes that he has a right under the First Amendment to publish truthful information, including the names and addresses of Tallahassee police officers, particularly where that information is already publicly available.

19. Having been arrested and prosecuted twice for publishing truthful information that was already publicly available, Plaintiff has refrained from exercising that right for fear of arrest and prosecution.

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<sup>2</sup> Section 12-1 was repealed on January 28, 2009.

20. Unless the statute is declared unconstitutional by this Court, and its enforcement enjoined, Plaintiff will continue to be subject to arrest and prosecution if he publishes the name and address or phone number of a Tallahassee police officer. Plaintiff has been, and will continue to be irreparably harmed by this continued threat which results in the denial of his constitutional right.

21. Plaintiff has no adequate remedy at law because the denial of Plaintiff's constitutional rights cannot be remedied through legal relief. Indeed, Plaintiff seeks only declaratory and injunctive relief and does not seek damages.

22. Plaintiff's arrest, and enforcement of the statute, by Defendant was under color of state law and pursuant to Defendant's custom, practice and policies.

#### CAUSE OF ACTION

23. Fla. Stat. §843.17 is unconstitutional on its face and as applied to Plaintiff, in violation of his rights under the First and Fourteenth Amendments to the U.S. Constitution. This violation may be redressed pursuant to 42 U.S.C. § 1983.

#### REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

(a) declare that Fla. Stat. §843.17 is unconstitutional on its face as a matter of law;

(b) declare that Fla. Stat. §843.17 is unconstitutional as applied to Plaintiff's actions as a matter of law;

(c) enter a preliminary and/or permanent injunction against Defendant, prohibiting Defendant and its agents, subordinates and employees from enforcing §843.17;

(d) award Plaintiff his costs, litigation expenses and attorneys' fees pursuant to 42 U.S.C. §1988; and

(e) grant Plaintiff such other and further relief as may, in the discretion of this Court, be just and proper.

Respectfully submitted,

/s Randall C. Marshall

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Chapter

COUNSEL FOR PLAINTIFF

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. Stat. §86.091 and N.D. Fla. L.R. 24.1(B), I certify that a copy of this Complaint has been sent, by U.S. Mail on this 18<sup>th</sup> day of September, 2009, to:

Hon. Bill McCollum, Attorney General  
State of Florida  
The Capitol PL-01  
Tallahassee, FL 32399-1050

/s Randall C. Marshall



# UNITED STATES DISTRICT COURT

\_\_\_\_\_  
District of \_\_\_\_\_

## SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

an answer to the complaint which is served on you with this summons, within \_\_\_\_\_ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(By) DEPUTY CLERK

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER ( <i>PRINT</i> )	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 30%;"> <p>Executed on _____</p> <p style="text-align: center;">Date</p> </div> <div style="width: 60%;"> <p>_____  <i>Signature of Server</i></p>    <p>_____  <i>Address of Server</i></p> </div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.