

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

MICHAEL SAVAGE [REDACTED]
[REDACTED]; **CENTER FOR BIO-ETHICAL
REFORM, INC.**; **GREGG
CUNNINGHAM**; and **KEVIN MURRAY**,

Plaintiffs,

v.

JANET NAPOLITANO, in her official
capacity as Secretary of the Department of
Homeland Security; and **ERIC H. HOLDER,
JR.**, in his official capacity as Attorney General
of the United States,

Defendants.

Case No.

COMPLAINT

THOMAS MORE LAW CENTER
Robert J. Muise, Esq. (P62849)
Richard Thompson, Esq. (P21410)
Brandon Bolling, Esq. (P60195)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
rmuise@thomasmore.org
(734) 827-2001
Counsel for Plaintiffs

Plaintiffs Michael Savage [REDACTED] Center for Bio-Ethical Reform, Inc. (CBR), Gregg Cunningham, and Kevin Murray, by and through their undersigned counsel, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fifth Amendments to the United States Constitution,

challenging the policy, practice, and custom of the United States Government that targets for disfavored treatment those individuals and groups that are considered to be “rightwing extremists” by the federal government (hereinafter “Rightwing Extremism Policy”). The “Rightwing Extremism Policy” was recently and publicly revealed by the Department of Homeland Security in an “assessment” entitled, “Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment.”

2. The United States Government’s policy of targeting certain individuals and groups for disfavored treatment based on their viewpoint on controversial political issues creates a chilling effect that violates the First and Fifth Amendments.

3. Plaintiffs seek a declaration that through the adoption, implementation, and enforcement of the “Rightwing Extremism Policy,” Defendants have violated Plaintiffs’ clearly established constitutional rights as set forth in this Complaint; a declaration that the “Rightwing Extremism Policy” chills the expression of controversial political speech in violation of the First Amendment; a declaration that the “Rightwing Extremism Policy” has a chilling effect on the freedom of expressive association in violation of the First Amendment; a declaration that the “Rightwing Extremism Policy” violates the equal protection guarantee of the Fifth Amendment by targeting certain individuals and groups for disfavored treatment based on the viewpoint of their speech; a permanent injunction enjoining the “Rightwing Extremism Policy” and its application to Plaintiffs’ speech and activities; and an award of attorney fees and costs pursuant to 28 U.S.C. § 2412 (the Equal Access to Justice Act), and other applicable laws.

JURISDICTION AND VENUE

4. This action in which the United States is a defendant arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1346.

5. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

6. Venue is proper under 28 U.S.C. § 1391(e) because this is the judicial district in which Plaintiff Kevin Murray resides.

PLAINTIFFS

7. Plaintiff Michael Savage, [REDACTED] is an adult citizen of the United States. Plaintiff Savage is a broadcast journalist and the host of the popular conservative radio talk show *The Savage Nation*. Plaintiff Savage's radio show reaches between 8 and 10 million listeners on approximately 400 stations throughout the United States, including stations in Michigan, making his show the third most widely heard broadcast in the United States.

8. Plaintiff Center for Bio-Ethical Reform, Inc. ("CBR"), is a pro-life, non-profit corporation that is recognized by the Internal Revenue Service (IRS) as a 501(c)(3) organization. It is incorporated under the laws of California.

9. Plaintiff Gregg Cunningham is an adult citizen of the United States and the Executive Director of CBR.

10. Plaintiff Kevin Murray is an adult citizen of the United States and a resident of Washtenaw County, Michigan. He is a former U.S. Marine who served honorably in the war in Iraq.

DEFENDANTS

11. Defendant Janet Napolitano is the Secretary of the Department of Homeland Security (DHS). As the head of DHS, she is responsible for creating, adopting, implementing, and enforcing the federal government's "Rightwing Extremism Policy." Defendant Napolitano is also responsible for the policies, practices, procedures, customs, and actions of the Office of Intelligence and Analysis and the Extremism and Radicalization Branch of the Homeland Environment Threat Analysis Division. In her capacity as Secretary of DHS, Defendant Napolitano is responsible for creating and operating "fusion centers," which are local intelligence centers that were established across the United States to conduct surveillance, gather information, and combat "terrorism" and related "criminal" activity. Defendant Napolitano is sued in her official capacity.

12. Defendant Eric H. Holder, Jr. is the Attorney General of the United States. As the Attorney General, he is the head of the Department of Justice and the chief law enforcement officer of the federal government. Accordingly, he is charged with implementing and enforcing the federal government's "Rightwing Extremism Policy." Defendant Holder is sued in his official capacity.

STATEMENT OF FACTS

A. “Rightwing Extremism Policy.”

13. On April 7, 2009, the Office of Intelligence and Analysis issued an “assessment” that was prepared by the Extremism and Radicalization Branch of the Homeland Environmental Threat Analysis Division. This “assessment” was coordinated with the Federal Bureau of Investigation (FBI).

14. The DHS assessment was entitled, “Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment,” and it reflects the “Rightwing Extremism Policy” of the federal government.

15. Defendant Napolitano publicly approved the federal government’s “Rightwing Extremism Policy.”

16. The “Rightwing Extremism Policy” is designed to deter, prevent, and preempt activities that government officials deem to be in opposition to the policies advanced by the Obama administration. Such activities are considered harmful, dangerous, and a threat to national security. By deterring, preventing, and preempting such activities, federal officials seek to influence domestic public opinion in support of the favored policies of President Obama.

17. The “Rightwing Extremism Policy” considers “rightwing extremists” to be dangerous and a threat to national security.

18. The “Rightwing Extremism Policy” is a tool of intimidation for federal, state, and local government officials. It provides a basis for government officials to abuse their positions of power to stifle political opinion and opposition. It also provides political adversaries with a basis

for making official complaints and allegations against “rightwing extremists” to government officials, thereby empowering the “heckler” with a “veto” over controversial political messages.

19. According to the “Rightwing Extremism Policy,” rightwing extremists include those groups and individuals that are mainly antigovernment, that reject federal authority in favor of state or local authority, or that reject government authority entirely. Rightwing extremists also include those groups and individuals that are dedicated to a single issue, such as opposition to abortion, immigration, same-sex “marriage,” and gun control.

20. The “Rightwing Extremism Policy” is concerned about “rhetorical” opposition to government policies, “[r]ightwing extremist chatter on the Internet,” “accusatory tactics,” and “antagonis[m] toward the new presidential administration and its perceived stance on a range of issues, including immigration and citizenship . . . and restrictions on firearms ownership and use.”

21. The “Rightwing Extremism Policy” seeks to deter “rightwing extremist groups’ frustration over a perceived lack of government action on illegal immigration,” claiming that such frustration “has the potential to incite individuals or small groups toward violence.”

22. According to the “Rightwing Extremism Policy,” “rightwing extremist groups perceive recent gun control legislation as a threat to their right to bear arms and in response have increased weapons and ammunition stockpiling, as well as renewed participation in paramilitary training exercises. Such activity, combined with a heightened level of extremist paranoia, has the potential to facilitate criminal activity and violence.” Accordingly, the “Rightwing Extremism Policy” does not consider a private citizen’s right to bear arms to be an individual

right protected by the United States Constitution. This view is consistent with the view held by Defendant Holder.

23. According to the “Rightwing Extremism Policy,” “[d]ebates over appropriate immigration levels and enforcement policy . . . has the potential to turn violent.”

24. According to the “Rightwing Extremism Policy,” “[r]ightwing extremist paranoia of foreign regimes” is considered dangerous and a threat to national security.

25. According to the “Rightwing Extremism Policy,” “disgruntled military veterans” are susceptible to being recruited and radicalized by rightwing extremists in order to exploit the veterans’ skill and knowledge derived from military training and combat. Consequently, “disgruntled military veterans” are considered dangerous and a threat to national security.

26. Pursuant to the “Rightwing Extremism Policy,” federal officials will work with state, local, tribal, and private sector entities to conduct surveillance and to gather information in order to deter the activities of those individuals and groups considered to be “rightwing extremists.”

27. Pursuant to the “Rightwing Extremism Policy,” federal officials “encourage[]” the reporting of information concerning “suspicious” or “criminal” activity of rightwing extremists to DHS and the FBI. The submitted reports “should include the date, time, location, type of activity, number of people and type of equipment used for the activity, the name of the submitting company or organization, and a designated point of contact.”

28. To facilitate the implementation and enforcement of the “Rightwing Extremism Policy,” federal officials make use of state and local fusion centers, which are local intelligence centers created by DHS to combat “terrorism” and related activities that are deemed to be “criminal.”

B. Plaintiff Michael Savage.

29. Plaintiff Michael Savage's radio show, *The Savage Nation*, addresses many controversial political and social issues, including homosexuality, same-sex "marriage," the so-called "stimulus" legislation, national defense, liberalism, immigration, abortion, and gun control.

30. During his widely heard public broadcasts, Plaintiff Savage expresses his strong opposition to illegal aliens, the increasing power of the federal government, gun control, abortion, and various other policies of the Obama administration.

31. Plaintiff Savage is very critical of and antagonistic toward the Obama administration and its socialist policies, which Plaintiff Savage believes are causing a dangerous increase in the power of the federal government and the loss of the national sovereignty of the United States. Plaintiff Savage opposes the increase of federal authority that is occurring under the Obama administration and favors state or local authority.

32. Plaintiff Savage relies upon his many listeners and sponsors to support his popular radio show. Plaintiff Savage's listeners and sponsors support *The Savage Nation* because they support the viewpoints expressed during the show.

33. Pursuant to the federal government's "Rightwing Extremism Policy," Plaintiff Savage is a "rightwing extremist," subjecting him to government scrutiny, investigation, surveillance, and intimidation.

C. Plaintiffs CBR and Gregg Cunningham.

34. Plaintiff CBR was established in 1990 as a non-profit public policy and advocacy group to promote prenatal justice and the right to life for the unborn, the disabled, the infirm, the aged,

and all vulnerable peoples through education and the development of innovative educational programs. One such educational program is the Reproductive Choice Campaign (“RCC”).

35. The RCC consists of large, colorful pictures depicting graphic images of first-term aborted fetuses displayed on the sides of box-body style trucks that are owned by CBR and operated by CBR employees and volunteers. Above each picture is captioned the word “Choice.” The purpose of this educational program is to expose as many people as possible to the reality of “Choice,” a term that is at the heart of the abortion controversy. The RCC demonstrates to onlookers that “Choice” is the killing of innocent human life, and not some sterile, innocuous term. CBR employees and volunteers drive these trucks along the streets and highways of major cities and towns throughout the United States, including the streets and highways of major cities and towns in Michigan.

36. Another educational program used by CBR is the Airborne Reproductive Choice Campaign (“ARCC”). The ARCC consists of large, colorful pictures depicting graphic images of first-term aborted fetuses displayed on banners towed behind aircraft. CBR hires individual pilots or companies that provide aerial advertising to fly CBR’s pro-life aerial banners. CBR has flown its banners throughout the United States.

37. CBR also engages in an educational program called the Genocide Awareness Project (GAP), which is a traveling photo-mural exhibit that compares the contemporary genocide of abortion to historically recognized forms of genocide. CBR’s GAP display visits university campuses around the country to show as many students as possible what abortion actually does to unborn children and to get them to think about abortion in a broader historical context.

38. CBR strongly opposes President Obama's pro-abortion policies and has instituted an "Obama Awareness Campaign," which juxtaposes images and quotations of President Obama alongside images of aborted fetuses and aborted preborn children. CBR intends to display these graphic images on the sides of box-body style trucks driven by CBR employees and volunteers and on banners towed by aircraft throughout the United States, including at events in which President Obama is either attending or speaking.

39. As a nonprofit organization, CBR relies heavily upon volunteers and on charitable donations from its supporters to conduct and fund its activities.

40. Throughout its existence, CBR has been harassed by federal and local law enforcement officers and agencies. CBR and its employees and volunteers have been unreasonably detained for an extended period of time by agents from the FBI, who described CBR as a domestic terrorist organization on account of CBR's opposition to abortion, equating CBR with Timothy McVeigh and the 1995 Oklahoma City bombing. Similarly, local law enforcement officers and agencies have harassed and detained CBR and its employees and volunteers on account of CBR's speech activity, treating CBR and its employees and volunteers as criminals.

41. CBR has been harassed by the IRS, forcing CBR to hire an expensive lawyer to beat back the threat of a costly audit.

42. CBR's pilots have been harassed by Federal Aviation Administration (FAA) officials, who have at times grounded CBR's aircraft on account of CBR's pro-life banners.

43. Pursuant to the federal government's "Rightwing Extremism Policy," CBR and its Executive Director, employees, and volunteers are "rightwing extremists," subjecting them to government scrutiny, investigation, surveillance, and intimidation.

44. The federal government's "Rightwing Extremism Policy" provides federal and local law enforcement officers and agencies with a DHS-sanctioned basis to conduct further harassment of CBR on account of CBR's speech activities and its strong opposition to abortion and President Obama's policies on abortion.

D. Plaintiff Kevin Murray.

45. Plaintiff Kevin Murray is a "disgruntled military veteran" who is publicly antagonistic toward the Obama administration and its stance on a range of issues, including immigration, restrictions on firearms ownership and use, abortion, and same-sex "marriage." Plaintiff Murray is also a plaintiff in another federal lawsuit that was filed against Treasury Secretary Timothy Geithner. That lawsuit seeks to enjoin the unconstitutional distribution to, and use of federal taxpayer funds by, American International Group, Inc. ("AIG").

46. Plaintiff Murray believes that the Obama administration's policies are leading to the creation of a world government that would usurp the sovereignty of the United States and the authority of its Constitution, thereby infringing upon his liberty.

47. Pursuant to the federal government's "Rightwing Extremism Policy," Plaintiff Murray is a "rightwing extremist," subjecting him to government scrutiny, investigation, surveillance, and intimidation.

E. Unconstitutional Purposes & Effects of the "Rightwing Extremism Policy."

48. The purposes and effects of the "Rightwing Extremism Policy" are to silence political opposition to the policies of the Obama administration, to marginalize political opponents by officially and pejoratively labeling them as "rightwing extremists," to deter and diminish support for political opponents, and to provide a DHS-sanctioned justification for government officials,

including law enforcement officials, to harass political opponents, thereby creating a chilling effect on political speech and expressive association.

49. The federal government's "Rightwing Extremism Policy" brands individuals and groups such as Plaintiffs as criminals on account of their political viewpoints, subjecting them to governmental scrutiny, investigation, surveillance, and intimidation, which has a chilling effect on their activities and their rights to freedom of speech and expressive association.

50. The "Rightwing Extremism Policy" is a governmental attack on the reputations of Plaintiffs that is designed to marginalize them and their opposition to the policies and practices of the federal government, particularly including their opposition to the policies and practices of the Obama administration.

51. The "Rightwing Extremism Policy" deters listeners and sponsors from supporting Plaintiff Michael Savage and his radio program, and it deters donors and volunteers from supporting the activities of CBR. Moreover, the "Rightwing Extremism Policy" deters universities and student groups from inviting CBR and its GAP display to their campuses.

52. The creation and adoption of the "Rightwing Extremism Policy" has caused irreparable harm to Plaintiffs.

FIRST CLAIM FOR RELIEF

(First Amendment—Freedom of Speech)

53. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

54. By reason of the aforementioned "Rightwing Extremism Policy," which was created, adopted, and enforced under the color of federal law and authority, Defendants have chilled the

exercise of Plaintiffs' right to freedom of speech in violation of the First Amendment to the United States Constitution.

55. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

SECOND CLAIM FOR RELIEF

(First Amendment—Expressive Association)

56. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

57. By reason of the aforementioned "Rightwing Extremism Policy," which was created, adopted, and enforced under the color of federal law and authority, Defendants have chilled the exercise of Plaintiffs' right to expressive association in violation of the First Amendment to the United States Constitution.

58. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

THIRD CLAIM FOR RELIEF

(Fifth Amendment—Equal Protection)

59. Plaintiffs hereby incorporate by reference all above-stated paragraphs.

60. By reason of the aforementioned "Rightwing Extremism Policy," which was created, adopted, and enforced under the color of federal law and authority, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Fifth Amendment to the United

States Constitution by targeting Plaintiffs for disfavored treatment on account of Plaintiffs' viewpoint on certain political issues.

61. As a direct and proximate result of Defendants' violation of the Fifth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

- A) to declare that Defendants' "Rightwing Extremism Policy" violates the First and Fifth Amendments to the United States Constitution as set forth in this Complaint;
- B) to permanently enjoin the "Rightwing Extremism Policy" and its application to Plaintiffs' speech and activities as set forth in this Complaint;
- C) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 28 U.S.C. § 2412 (the Equal Access to Justice Act), and other applicable law;
- D) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq. (P62849)