

FOR IMMEDIATE RELEASE:

Galveston bar, tavern, and business owners file suit against City Smoking Ban.

GALVESTON, Texas – 19 February 2010

"When governments fear the people, there is liberty. When the people fear the government, there is tyranny."

Thomas Jefferson

Many business owners in this city are afraid of their city government, because they hold the power of life and death over their livelihood, and they have already seen previous governmental actions harm their businesses. During the City Council discussions on banning smoking in bars, taverns, other businesses numerous business owners pleaded with Council not to pass this ban, because it would gravely harm, or even destroy their business, and they might even lose their life savings.

Their pleas were summarily dismissed as the ravings of uninformed kooks who simply did not understand the benefits that would eventually come their way when an unknown number of non-smokers would flock to their businesses. Of course, Council could not guarantee that this would happen; they just believed that it would. Meanwhile, the business owners were forced to accept a tremendous risk to their business model that the Council was unwilling to quantify by performing the Takings Impact Assessment required by law. The law says that if the Council wants to restrict the use of private property, so that the owners can not maximize their income, the owners do not have to take on the burden of the cost themselves; the taxpayers are supposed to compensate them. A so-called "public good" should be paid for by the taxpayers; not a few individuals.

The Galveston City Council ignored private property rights guaranteed by the 5th Amendment to the U.S. Constitution, and the Texas Constitution, in favor of their personal opinions; exactly what the Founders meant to prevent by giving us a Bill of Rights. There is no

guarantee that Constitutional Rights will be observed, in the City of Galveston, unless you are willing to assert those rights. This is exactly what these courageous business owners have decided to do! They were also very fortunate that attorney Anthony Griffin was willing to go above and beyond the call to help them assert their Constitutional Rights.

Of course, if you sue the City, they will just use your own money to defend themselves, and your own money to pay the judgment if you should be fortunate enough to win. Where is the justice in this process?

Although the GOP is not a part of this Plaintiff's group, and not involved in the attorney-client discussions or strategies, we can certainly understand why the Plaintiffs chose to take the unprecedented step to sue each of the Councilmembers personally in an effort to allow them to experience the stress and risk that they have been dealing with since the ordinance was passed. Because the Plaintiffs are suing the Councilmembers due to a Constitutional violation, there is a much higher probability of obtaining a judgment against them than if the suit involved a non-Constitutional dispute.

We know from our experience in trying to warn the City Council that their support of the GHA rebuilding plan makes them personally liable, due to a Constitutional violation of GHA's public housing residents' Civil Rights; that they simply do not believe it even though the Handbook from the Texas Municipal League clearly states, "*The literal language of Section 1983 makes all persons, councilmembers included, personally liable for damages if their acts result in depriving others of their civil rights, regardless of whether such acts were reasonable and made in good faith. Additionally, the U.S. Supreme Court has held that Section 1983 does not require proof that a defendant deliberately intended to deprive the plaintiff of his legal rights; the mere deprivation is itself a violation.*"

<http://galvestonogp.org/COG/HRHChapter10.pdf>

I am not a smoker, and I greatly prefer to go in bars and clubs without smoke, so I understand the knee-jerk impulse to dictate policy according to my own personal wishes, but if we don't support these

business owners' property rights, it won't be long before the City Council will be nullifying other rights in ways that will horrify us!

The Executive Director of the GHA has said that he expects the GHA rebuilding plan to end up in federal court, and the way things stand right now; he's probably right, since two public-interest groups have already filed administrative complaints. Now that this lawsuit has set the precedent of suing the Councilmembers, who voted for the smoking ban, personally; we have to expect that the public-interest group who organizes a Plaintiffs' group of past, present, and future GHA public housing residents will be very likely to name all of those who vote for the GHA rebuilding plan as Defendants, personally, too.

The GOP is very hopeful that the stance taken by this Plaintiffs' group will be successful in reclaiming their property rights guaranteed to them under the 5th Amendment and it will set a precedent that can be used in many other jurisdictions to reclaim the rights of countless others that have been lost to overreaching governmental actions!

<http://www.galvestonogp.org/COG/EvertvGalveston.pdf>

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