

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KEVIN GAUGHEN and DAVID KOCUR,

Plaintiffs,

v.

DAUPHIN COUNTY, a political subdivision
of the Commonwealth of Pennsylvania and
ANTHEA STEBBINS, in her individual
capacity;

Defendants.

Civil Action No.: 1:23-cv-00077

(Hon. Christopher C. Conner)

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Kevin Gaughen and David Kocur (“Plaintiffs”), on the one hand, and Dauphin County, a political subdivision of the Commonwealth of Pennsylvania, and Anthea Stebbins, in her individual capacity (“Defendants”), on the other hand.

DEFINITIONS

As used in this Agreement:

“Defendants” includes Dauphin County, any and all of Dauphin County’s past, present, and future commissioners, departments, administrators, employees, agents, insurers, reinsurers, claims adjusters, and attorneys; and Anthea Stebbins, herself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Anthea Stebbins.

“Plaintiffs” includes Kevin Gaughen, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Kevin Gaughen; and David Kocur, himself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through David Kocur.

RECITALS

WHEREAS, Plaintiffs filed a lawsuit against Defendants in United States District Court for the Middle District of Pennsylvania, captioned *Kevin Gaughen and David Kocur v. Dauphin*

County, a political subdivision of the Commonwealth of Pennsylvania, and Anthea Stebbins, in her individual capacity, Case No. 1:23-cv-00077-CCC (the “Lawsuit”);

WHEREAS, Plaintiffs alleged in the Lawsuit that Defendants violated the First and Fourteenth Amendments to the United States Constitution by maintaining a policy and practice prohibiting all political activity in Fort Hunter Park and by enforcing that policy and practice against Plaintiffs;

WHEREAS, Plaintiffs and Defendants wish to resolve all disputes and claims raised in the Lawsuit;

WHEREAS, Plaintiffs covenant and warrant that they have not assigned, transferred, or subrogated any portion of any claim that they have asserted or could have asserted in the Lawsuit; and

WHEREAS, for and in consideration of the promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, Plaintiffs and Defendants now compromise and settle the Lawsuit under the terms provided in this Agreement. The foregoing recitals are a substantive part of this Agreement.

I. CONSIDERATION AND RELEASE OF CLAIMS

(A) **Consent Decree and Permanent Injunction:** For and in consideration of Plaintiffs’ promises and obligations under this Agreement, Defendants agree to the execution and entry of a Consent Decree and Permanent Injunction, attached to the Agreement as Exhibit “A,” declaring that Dauphin County’s policy prohibiting all political activity in Fort Hunter Park violates the First Amendment and permanently enjoining the Defendants from enforcing said ban on all political activity in Fort Hunter Park. If the Court modifies or does not enter the Consent Decree and Permanent Injunction as written, this Agreement is voidable at the option of either party.

(B) **Damages and Attorneys’ Fees:** For and in consideration Plaintiffs’ promises and obligations under this Agreement, Defendants agree to pay the gross sum of \$91,000.00 (Ninety-One Thousand Dollars and No Cents) (the “Payment”). Of the Payment, \$46,000.00 in damages shall be made by two checks: one check in the amount of \$23,000.00 (Twenty-three Thousand Dollars and No Cents) payable directly to Kevin Gaughen; and one check in the amount of \$23,000.00 (Twenty-three Thousand Dollars and No Cents) payable directly to David Kocur. The \$45,000.00 (Forty-five Thousand Dollars and No Cents) remainder of the Payment shall be paid by check payable to the Foundation for Individual Rights in Expression (“FIRE”), a nonprofit corporation with which Plaintiffs’ counsel of record are employed, in satisfaction of attorneys’ fees. Upon execution of this Agreement, FIRE will promptly provide Defendants an IRS Form W-9 or other suitable written communication providing the tax identification number for FIRE. The Payment shall made in accordance with Section V of this Agreement.

(C) **Dismissal of the Lawsuit:** For and in consideration of Defendants' promises and obligations under this Agreement, Plaintiffs agree to dismiss with prejudice all claims asserted in the Lawsuit or that could have been asserted in the Lawsuit in accordance with the process set forth in Section V.

(D) **Release by Plaintiffs:** For and in consideration of Defendants' promises and obligations under this Agreement, Plaintiffs hereby release and forever discharge any and all Claims against the Defendants arising out of or relating to the Lawsuit, both past and present, occurring on or before the Effective Date of this Agreement, known and unknown, foreseen and unforeseen. For purposes of the Releases herein, "Claims" means any debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, expenses (including attorneys' fees and costs incurred), rights under any and all federal and state laws, and any and all claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity.

(E) **Release by Defendants:** For and in consideration of Plaintiffs' promises and obligations under this Agreement, Defendants hereby release and forever discharge any and all Claims against the Plaintiffs arising out of or relating to the Lawsuit, both past and present, occurring on or before the Effective Date of this Agreement, known and unknown, foreseen and unforeseen. For purposes of the Releases herein, "Claims" means any debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, expenses (including attorneys' fees and costs incurred), rights under any and all federal and state laws, and any and all claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity.

II. NO PENDING LITIGATION

Plaintiffs represent and confirm that, as of the date of their execution of this Agreement, other than the Lawsuit, they have not filed or otherwise initiated any lawsuit, complaint, charge, appeal, or other proceeding against either Defendant in any local, state, or federal court or with any other governmental agency based upon events occurring prior to the date of this Agreement. To the extent permitted by law, Plaintiffs expressly waive any right to damages awarded by any governmental agency or court relating to any claims that are released by this Agreement.

III. TREATMENT FOR PURPOSES OF TAXATION

Plaintiffs agree and understand that Defendants have made no representations or guarantees regarding the proper tax treatment of the Payment set forth in Section I.B. Plaintiffs assume full and sole responsibility to any federal, state, or local taxing authority for any tax consequences, including interest, penalties, damages, or expenses, regarding income or other taxes arising out of the Payment. Plaintiffs agree and understand that the treatment of payments under this Agreement by governmental taxing authorities has no bearing on the validity of this Agreement.

IV. COOPERATION OF THE PARTIES

(A) Plaintiffs and Defendants agree to cooperate fully, to execute any documents necessary to effectuate this Agreement, and to take such additional actions that reasonably may be necessary or appropriate to give force and effect to the terms and intent of this Agreement and which are not inconsistent with its terms. Each party shall bear his, her, or its own attorneys' fees, costs, and expenses arising from the negotiation, preparation, and implementation of this Settlement Agreement, other than any fees or costs necessary to enforce the Consent Decree and Permanent Injunction entered by the Court pursuant to Section I.A..

(B) Plaintiffs and Defendants represent and certify that they each have full authority to sign this Agreement, and that no further approvals or consents by any other persons or entities are necessary for Plaintiffs and Defendants to enter this Agreement and fulfill the conditions herein.

V. EFFECTIVE DATE OF AGREEMENT AND TIME FOR PAYMENT

This Agreement shall be effective after it is signed by all parties ("Effective Date").

(A) Within three (3) business days of the Effective Date, Defendants shall send to Plaintiffs' counsel (via email to conor.fitzpatrick@thefire.org) a copy of the Consent Decree and Permanent Injunction described in Section I.A., signed by Defendants' counsel, which Plaintiffs' counsel shall countersign and file.

(B) Within ten (10) business days of the Effective Date, Defendants or their agent or insurer shall mail, via overnight Federal Express with tracking information provided to Plaintiffs' counsel, the Payment described in Section I.B. to:

Jeff Zeman
Foundation for Individual Rights and Expression (FIRE)
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

(C) Within three (3) business days after the later of 1.) the Court entering the signed Consent Decree and Permanent Injunction without modification and 2.) Plaintiffs' counsel receiving the Payment described in Section I.B., Plaintiff shall file the Agreed Stipulation of Dismissal with Prejudice described in Section I.C.

VI. MISCELLANEOUS

(A) Any dispute related to the meaning or enforcement of this Agreement shall be brought in the U.S. District Court for the Middle District of Pennsylvania. Pennsylvania law shall govern the validity and interpretation of this Agreement insofar as federal law does not control. If the U.S. District Court for the Middle District of Pennsylvania declines to exercise jurisdiction of any such dispute, the parties agree that the dispute will be brought in the Dauphin County Court

of Common Pleas, Pennsylvania. If any action at law or in equity is necessary by Plaintiffs to enforce the Consent Decree and Permanent Injunction entered by the Court pursuant to Section I.A., Plaintiffs shall be entitled to reasonable attorney's fees and costs necessary to bring such action.

(B) This Agreement contains the entire understanding between Plaintiffs and Defendants. This Agreement supersedes any prior written or oral agreements. This Agreement shall not be modified, amended, or terminated unless such modification, amendment, or termination is executed in writing by Plaintiffs, on the one hand, and an authorized agent for Defendants on the other. No representations, warranties, recitals, covenants, or statements of intention have been made by, or on behalf of, any party hereto which are not embodied in this Agreement, and no party hereto shall be bound by, or liable for, any alleged representation, warranty, recital, covenant, or statement of intention not so set forth.

(C) All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by Plaintiffs and Defendants.

(D) Other than Section I.A., if any single paragraph or clause of this Agreement should be found unenforceable, invalid, or illegal, it shall be severed, and the remaining paragraphs and clauses shall be enforced in accordance with the intent of this Agreement. If Section I.A. is found unenforceable, invalid, or illegal, this Agreement shall become void.

(E) Nothing in this Agreement prohibits either party from complying with any state or federal law.

(F) Any headings or subheadings used herein are for reference purposes only and do not affect the substantive provisions of the Agreement.

(G) A copy of this Agreement may be executed in duplicate originals. Any required signatures or acknowledgements communicated by facsimile transmission or PDF (portable document format) are as effective as the originals thereof.

(H) Plaintiffs hereby represent and certify that they have entered into this Agreement knowingly and voluntarily. Plaintiffs certify that they (i) have carefully read all of this Agreement and understand its provisions; (ii) have been advised to consult with an attorney of their choice before signing this Agreement and in fact have had an opportunity to consult with legal counsel; (iii) have not been influenced to sign this Agreement by any statement or representation by Defendants or their attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

(I) Defendants hereby represent and certify that they have entered into this Agreement knowingly and voluntarily. Defendants certify that they (i) have carefully read all of this Agreement and understand its provisions; (ii) have been advised to consult with an attorney of their choice before signing this Agreement and in fact have had an opportunity to consult with legal counsel; (iii) have not been influenced to sign this Agreement by any statement or

representation by Plaintiffs or their attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

ACCEPTED and AGREED TO on the date stated below:

KEVIN GAUGHEN

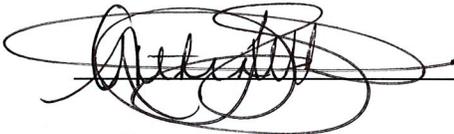
DAVID KOCUR

Date:

Date:

ANTHEA STEBBINS

DAUPHIN COUNTY





4/25/2023
Date:

By: STEPHEN B. LIBHART
DEPUTY CHIEF CLERK/CHIEF OF STAFF
Its:

4/25/23
Date:

representation by Plaintiffs or their attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

ACCEPTED and AGREED TO on the date stated below:

KEVIN GAUGHEN



4/5/2023
Date: _____

DAVID KOCUR

Date: _____

ANTHEA STEBBINS

Date: _____

DAUPHIN COUNTY

By: _____

Its: _____

Date: _____

representation by Plaintiffs or their attorneys that is not contained in this written Agreement; and (iv) have been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

ACCEPTED and AGREED TO on the date stated below:

KEVIN GAUGHEN

Date:

DAVID KOCUR



Date:

4/5/2023

ANTHEA STEBBINS

Date:

DAUPHIN COUNTY

By:

Its:

Date: