



SIGMA

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Jill Swansen, Office Assistant,
Spokane County Parks and Recreation
404 N. Havana
Spokane, WA 99202

July 12, 2010

Dear Jill;

Ordinarily, at this time of year, I would be getting excited about the upcoming End of Season Softball Tournament. Unfortunately, several recent incidents have caused me great concern and have tempered any excitement with equal measures disappointment and irritation. Because of our longstanding and friendly relationship with you and the County Parks and Rec Office, I felt I owed it to you to let you know my thoughts, in the hope that you and your staff might be able to preempt any problems that may arise as a result of this issue.

My concern is with the Spokane County Parks and Recreation “casual profanity” rule for the adult softball league. The rule states:

“Umpire will make ruling on inappropriate use of profanity”

To be blunt, the rule is blatantly unconstitutional. No one can take away our right to free expression, especially in public parks (where many of our games are played), and particularly in this manner. Its use constitutes a prior restraint on our First Amendment right to free expression, and it is currently being used exactly that way, which is in clear violation of our rights as free citizens of the United States.

What follow are a couple recent examples in which I myself have witnessed Spokane County Softball league umpires violating the First Amendment rights of softball players. Both examples have taken place within the last month.

Example #1

On June 25th, I was playing at Bowdish Jr. High in DDVFr Coed league for Timberline Truss. Our umpire that night was very knowledgeable with regard to the official ASA softball rules, but not, unfortunately, with rules pertaining to the U.S. Bill of Rights. The umpire (who’s name I neglected to record) penalized the other team an extra out for using the word “Shit”, (the player in question didn’t even shout it, she just uttered it in a moment of surprise), and threatened ejection for any further outbursts.

Example #2

On Friday, July 9, while playing at Edgecliff, again for Timberline Truss in the DDVFr Coed League against Mr. D.J.. Our umpire, who was named Mitch, knew the official softball rules

inside and out. Unfortunately, his knowledge of the Bill of Rights was not so extensive. Prior to the game he told both coaches that he would not tolerate any profanity, and he listed a few examples to convey his intent. The examples he used showed exactly how far he was taking the “casual profanity” rule. He said:

a. Any use of the “F-bomb” would earn immediate ejection.

b. First use of the word “Crap” would earn a warning. Second use of “Crap” would earn ejection.

c. “Taking the Lord’s name in vain” would earn ejection.

At that time, the coach for Mr. D.J. strongly objected, but her objections were disregarded by the umpire. Once the rest of us heard of the “rules” we were all in agreement that they were completely arbitrary and unfair. But we wanted to play softball (and none of us are lawyers). So we fell into line under the stated speech restrictions. Once the game was over, I expressed my displeasure about the umpire’s overly sensitive morality. It felt good to be a free man once again; but I was disappointed in myself for not speaking out sooner.

Since then, and after considering the matter, I have decided that I will no longer tolerate this unconstitutional prohibition on our rights to free expression. Not because I wish to start cursing like a sailor (although I could if I chose), but because the rule is wrong.

As much as anyone may object to the above terms, they are, without any doubt, protected speech. We have a constitutional right to express ourselves vis a vis those words, and with any other number of potentially objectionable words besides.

That’s not just my opinion...

The following is a quote from Justice Harlan of the United States Supreme Court (Cohen vs California, 1971) in which the court upheld a person’s right to use offensive, emotion-laden speech, even in a public courthouse. The case involved a man arrested for wearing a shirt with the message “Fuck the draft” (emphasis added):

“..We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated. Indeed, as Mr. Justice Frankfurter has said, ‘one of the prerogatives of American citizenship is the right to criticize public men and measures -- and that means not only informed and responsible criticism but *the freedom to speak foolishly and without moderation.*’ “

Free speech is the law of the land, and cannot be restrained, as the “casual profanity” rule seeks to do.

Additionally, the umpire, acting as the representative of the Spokane County Parks and Recreation office, has neither the right nor the authority to exercise control of any citizen’s speech in a public park. Parks have always been held as sacred ground with regard to the exercise of First Amendment rights.

Further, and most importantly, the “casual profanity” rule is an obvious case of prior restraint in that it seeks to prevent beforehand an instance of communication. In nearly every circumstance, the government cannot legally prevent speech from occurring. Given that the form of speech being restrained is also legal speech, the violation seems to me even more egregious. To put it simply, the “casual profanity” rule seeks to ban legal speech even before it occurs.

What is more, because the rule is subject to the interpretation of the umpire, there is not even a standard that can be applied prior to arriving at the park. This means that we as players do not even know what words will be banned until we hear from the umpire. So what we have, in effect, is a prior restraint of our First Amendment rights in a public park which we won’t even know about until we arrive at the park and are informed by a county employee who usually lacks sufficient legal training to even recognize the violation he is being asked to commit.

Should I, as sponsor, coach, and player of SIGMADOGS, encounter another umpire’s interpretation of the “casual profanity” rule, I will be forced, on principle, to insist that I be ejected even before the game starts. In fact, I will be announcing to the umpire and the other team prior to every game, my intention to disregard the “casual profanity” rule. I refuse to void my right to free expression in a public forum simply to avoid giving an umpire the vapors. Nor will I suppress my First Amendment rights in order to protect anyone’s delicate religious sensibilities. At forty-eight years of age, I do not have the energy or interest to indulge in such foolishness. But more importantly, as a U.S. citizen I am under no obligation to do so.

I apologize if the tone I’m striking here seems strident, but the above incidents have really stuck in my craw, and I take First Amendment issues very seriously (a characteristic I think I picked up from my daughter, who is a lawyer). Prior to these incidents, I was content to blithely play under the provisions of the “casual profanity” rule. But now that I see how our liberties can be incrementally taken away, I can no longer tolerate it.

Finally, it is not my intent to malign the good work you do at the County Rec office, or to cause you undue irritation. I think you folks do a tremendous job every year. This issue is not about you. But the “casual profanity” rule runs counter to freedoms long established - and paid for in blood - that we all have as citizens of this great nation.

I suggest that you immediately remove the rule and instruct all umpires to disregard it.

Sincerely

A handwritten signature in black ink, appearing to read "Steve Merryman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Merryman
509.922.8002

Sponsor, coach of SIGMADOGS (D+ Thur Coed)
Player on Timberline Truss (DDVFr Coed)