

**IN THE UNITED STATE DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

FRAN ANSLEY; BRENDA BELL;  
CAROLINE BEST; BETTY COLEMAN;  
LAURENCE COLEMAN;  
KEVIN COLLINS; GAYE EVANS;  
CAROL GREEN; RALPH HUTCHISON;  
ERIK JOHNSON; DENNIE KELLEY;  
GLENDA STRUSS-KEYES;  
MARCUS KEYES;  
ELIZABETH ANN LENTSCH;  
TED LOLLIS; CAROL NICKLE;  
SARA K. LUTZ; JOEL MORRIS;  
JIM SESSIONS; TODD SHELTON;  
ED SULLIVAN; SHELLEY WASCOM;  
OAK RIDGE ENVIRONMENTAL  
PEACE ALLIANCE, SARAH MARGARET  
HUTCHISON,

PLAINTIFFS,

v.

STEVEN C. ERHART, Manager of the  
Nuclear Production Office;  
LARRY KELLEY, Manager of the  
Department of Energy Oak Ridge  
Operations; CHARLES G. SPENCER,  
President and General Manager of  
Babcock & Wilcox Y-12, LLC;  
NEILE L. MILLER, Acting Administrator  
of National Nuclear Security  
Administration; STEVEN CHU,  
United States Secretary of Energy,

DEFENDANTS.

No. \_\_\_\_\_

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**COMPLAINT**

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Come the Plaintiffs, Fran Ansley, Brenda Bell, Caroline Best, Betty Coleman,

Laurence Coleman, Kevin Collins, Gaye Evans, Carol Green, Ralph Hutchison, Erik Johnson, Dennie Kelley, Glenda Struss-Keyes, Marcus Keyes, Elizabeth Ann Lentsch, Ted Lollis, Carol Nickle, Sara K. Lutz, Joel Morris, Jim Sessions, Todd Shelton, Ed Sullivan, Shelley Wascom, the Oak Ridge Environmental Peace Alliance, and Sarah Margaret Hutchison, by their counsel, and sue the Defendants, and for their cause of action would show:

### **I. Introduction**

1. This is a civil rights action for injunctive and declaratory relief brought by Plaintiffs pursuant to 42 U.S.C. § 1983 and § 1988 because of the actions by the Defendants which occurred on or about April 1, 2013 in Anderson County, Tennessee, which actions violated Plaintiffs' rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution.

### **II. Jurisdiction**

2. Jurisdiction is founded upon 28 U.S.C. § 1343.

### **III. Parties**

3. Each of the named Plaintiffs is a citizen who has, in the past, exercised his/her United States Constitutional First Amendment freedom of speech and right to assemble and to petition the Government for redress of grievances, and anticipates participating in exercising those rights on April 6, 2013, or sometime in the future, at the locus which is the subject of this Complaint.

4. Plaintiff Oak Ridge Environmental Peace Alliance (OREPA) is a not-for-profit corporation organized and existing pursuant to the laws of the state of Tennessee.
5. Defendant Larry Kelley is the manager of the United States Department of Energy Oak Ridge Operations.
6. Defendant Steven C. Erhart is the manager of the National Nuclear Security Administration Nuclear Production Office which oversees the Y-12 complex.
7. Defendant Charles G. Spencer is the president and general manager of the Babcock & Wilcox Y-12, LLC facility.
8. Defendant Neile L. Miller is the acting administrator of the United States National Nuclear Security Administration.
9. Defendant Steven Chu is the United States Secretary of Energy.

#### **IV. Factual Allegations**

10. On or about April 1, 2013, agents of the Defendants erected a barricade/fence around a piece of property adjacent to the Y-12 facility, which property had been utilized in the past for the exercise of citizens' right to the exercise of freedom of speech, the right of people peaceably to assemble, and the right of the people to petition the Government for a redress of grievances. Given the location of the barricade/fence, the timing of its placement, and the fact that the Plaintiffs for months have planned a demonstration of their First Amendment rights on Saturday, April 6, 2013, it is obvious that the clear intent of the Defendants is to

prevent the Plaintiffs from exercising their rights under the First Amendment.

11. For the past twenty-five years, Plaintiffs and others have utilized public land at the intersection of East Bear Creek Road and Scarboro Road for more than 700 gatherings in the exercise of their First Amendment rights. This area can be visually observed by a review of Exhibit A, attached. The triangular area in the center of the picture shows the public land which has been utilized for these past twenty-five years. The photograph also shows the existing fence of the Government's Y-12 facility. It is called the "229 Line" and extends around the perimeter of the Y-12 facility. The Department of Energy also owns the area within the triangle, as well as the balance of the property extending to Scarboro Road. In other words, the Department of Energy owns more real estate than is actually utilized and designated by the 229 Line as a site boundary for the Y-12 facility.
12. Plaintiff OREPA is an organization dedicated to the eradication of nuclear weapons, among other purposes. Under its auspices, a demonstration is planned for April 6, 2013, in the triangle area; such demonstrations and vigils have been held for the past twenty-five years without any time, place or manner restrictions. Moreover, Dr. Bill Bibb, former head of Defense Programs for the Y-12 complex, in an article published in the Knoxville News Sentinel on March 31, 2013, stated

He (Bibb) said Oak Ridge officials studied the way protests were handled at the Nevada test

site and decided it was OK to let people gather at the front of the plant. He suggested the reasoning for that model still stands.

“The Government has to allow reasonable area for people to express their constitutional rights of opposition,” he said, “and so we decided that the best place in the world to do that was around by the sign.” (The sign is within the triangle on Exhibit A.)

13. Plaintiffs would show that the triangle area is a public forum, entitled to greater constitutional protection because of its designated and historic use as an area for the exercise of First Amendment rights by citizens.
14. The triangular plot of ground outside the Y-12 plant boundary includes a no longer used stretch of railroad tracks, a gravel parking area, a set of three flagpoles, two large metal signs (billboard-sized) identifying the site as the Y-12 National Security Complex, a state historical marker, and a fairly large grassy area which has served as a public forum for gatherings sponsored under the auspices of OREPA and others since 1988. In addition to the use by persons associated with OREPA, student groups and members of the media have met with members of the public in this public forum area for presentations about the activities of the Y-12 facility and the environmental consequences of those activities. Further, other parties have used the public forum area for peace vigils , including the Buddhist monks of Nipponzan Myohoji, who hold annual public fasts for three to five days, and perform drumming and chanting according to their religious discipline.

15. The activities of OREPA and the other Plaintiffs have included Sunday vigils as a public witness to peace, rather than public protests. These Sunday night vigils have been going on continuously, every Sunday, for the past thirteen years (698 consecutive Sunday evenings). As mentioned earlier, OREPA has also sponsored public protests and demonstrations on a regular basis at the site for the past twenty-five years, and have done so with an unblemished record. Never once has an event been marred by any act of violence perpetrated by a member of OREPA. The actions of the Defendants' agents in setting up the barricade/fence at the edge of Scarboro Road, blocking any public access to the triangle area, or any area in the larger space between the existing 229 Line site boundary and Scarboro Road, in one fell swoop, has put an end to the Plaintiffs' rights to exercise their First Amendment rights. The Defendants have indicated that if Plaintiffs desire to engage in the exercise of their First Amendment rights, they must move their demonstrations and/or vigils to a different and less visible location within the boundary that has been setup by the placement of the barricade/fence on April 1, 2013. The proposed public forum (See Exhibit A) is located inside the new fence. The Defendants would control the entry and the departure. Thus, the proposed public forum area could only be accessed with the explicit permission of the Defendants, as it would be inside the fence. The current barricade/fence is temporary, and upon information and belief, will be later replaced by a permanent eight-feet high permanent fence.

16. In addition, the newly proposed public forum area is next to a facility called the New Hope Center, a large building which, until April 1, 2013, was located outside the fence of the Y-12 facility (also outside the 229 Line site boundary). The New Hope Center performs a variety of functions, including a place for persons having business with officials of the Y-12 facility to meet offsite, an auditorium and a small museum. The New Hope Center has an onerous application process for its use, including the areas surrounding it. In order to use the New Hope Center, or the area around it, the organization intending to have an event, demonstration or vigil, must file a formal application on paper, submitted with a \$500 bond, seven days in advance of any gathering. Moreover, the organization has to provide evidence of \$1,000,000 liability insurance, making the Government a co-insured, and meet any other requirements imposed by the Government or its contractor, whether those requirements are reasonable or capricious.
17. The stated reason of the Defendants for fencing out those who want to use the triangle public forum (See Exhibit A), which has been used for twenty-five years, is security. Plaintiffs would show that the claim of security is simply a disguise to prevent lawful, and what have been peaceful demonstrations, vigils, and other public meetings in the triangle public forum.
18. On information and belief, the 229 Line site boundary is approximately one-half mile from the actual bomb-making plant. The only thing

accomplished by extending the fence to Scarboro Road is to make the distance from the actual bomb plant to the fence a half-mile and some additional number of feet. No greater security is achieved.

19. Plaintiffs would show that if the Defendants are serious about preventing trespass into the Y-12 facility site, and thereby its security, the Defendants have always had the option of erecting an eight-foot tall chain link fence at the 229 Line, and replacing the existing barbed wire fence (as it has done at other areas of the perimeter that line heavily wooded areas).
20. Moreover, such an eight-foot tall chain link fence along the 229 Line site boundary would fully achieve the Defendants' stated security requirement, while still permitting public access not only to the public forum space used for free speech and assembly, peace vigils, nuclear weapons protests, and educational gatherings, it would also permit public access to the state historical marker on this same property. In other words, the Defendants' interest in constraining illegal entry into Y-12 on foot can easily and fully be satisfied without infringing on the long established public assembly space, which has been utilized for twenty-five years by Plaintiffs.

## **V. Cause of Action**

21. The actions of the Defendants, each of them, have deprived the Plaintiffs' of their rights under the First Amendment to the United States Constitution, specifically, the right to freedom of speech, the right to assemble, and the right to petition their Government for a redress of grievances, all as guaranteed under the First and Fourteenth



Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983.

22. As a proximate result of these constitutional violations, Plaintiffs will be denied their constitutional rights.
23. Denying the Plaintiffs the right to their planned demonstration on August 6, 2013, through the construction of the barricade/fence along Scarborough Road and thereby blocking them from access to the public forum space, will be an immediate and irreparable injury. It is for this reason that Plaintiffs seek a mandatory temporary restraining order directing the Defendants to remove the barricade/fence put up on April 1, 2013 (See Exhibit B), in a matter of hours. Plaintiffs would show that if this temporary barricade/fence can be put up in a matter of hours, it can be taken down in a matter of hours. The denial of the exercise of a constitutional right planned for April 6, 2013, is the denial of a right that cannot be replaced.

PREMISES CONSIDERED, Plaintiffs pray:

1. That process issue and be served upon each of these Defendants and that they answer this Complaint.
2. That this Court issue a Temporary Restraining Order, enjoining the Defendants from preventing the Plaintiffs from the use of the public forum area as identified in this Complaint at their planned April 6, 2013, demonstration. In that regard, Plaintiffs seek mandatory injunctive relief

directing the Defendants to remove the barricade/fence before the planned April 6, 2013, demonstration by these Plaintiffs.

3. That the Plaintiffs have permanent injunctive relief, barring the Defendants from ever blocking Plaintiffs' access to the designated and historical public forum of the space delineated in the triangle area of Exhibit A.
4. That the Plaintiffs recover their attorney fees and costs from the Defendants.
5. That Plaintiffs have such other, further and general relief to which they may show themselves entitled.

Respectfully submitted this 3<sup>rd</sup> day of April 2013.

s/John E. Eldridge

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