

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

SOUTHCOAST FAIR HOUSING, INC.	:	
	:	
Plaintiff	:	
	:	
v.	:	C.A. No. 18-
	:	
DEBRA SAUNDERS, in her official capacity as Clerk of the Rhode Island Supreme Court,	:	
	:	
Defendant	:	

COMPLAINT

Plaintiff SouthCoast Fair Housing, Inc. (“Plaintiff”) hereby states as follows by and for its Complaint against Defendant Debra Saunders in her official capacity as Clerk of the Rhode Island Supreme Court (“Defendant”).

Parties and Jurisdiction

1. SouthCoast Fair Housing, Inc. (“SCFH”) is a nonprofit corporation incorporated under the laws of the Commonwealth of Massachusetts for the purposes of promoting fair housing practices, eliminating prejudice and discrimination, and ensuring fair, equal, and affordable housing opportunities for all. SCFH maintains offices in New Bedford, Massachusetts and in Rhode Island at 1005 Main Street, Pawtucket, Rhode Island.

2. Debra Saunders is a citizen of the State of Rhode Island. She is named in this action solely in her official capacity as Clerk of the Rhode Island Supreme Court, in which capacity she is responsible for the administration and enforcement of certain rules of the Rhode Island Supreme Court governing the practice of law in the State of Rhode Island, as set forth below.

3. This Court has jurisdiction over this action because it presents a Federal question pursuant to 28 U.S.C. §1331. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b).

Facts Common to All Counts

4. Plaintiff restates the allegations of Paragraphs 1 through 3 as if fully set forth herein.

A. The Requirements of Rule 11

5. The Rhode Island Supreme Court encourages attorneys to provide free and reduced-cost legal services to persons who are not adequately served in the system of justice, whether or not those persons are considered poor. For example, paragraph 6 of the Preamble to the Rhode Island Rules of Professional Conduct, Article V of the Rhode Island Supreme Court Rules, states as follows:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, **and sometimes persons who are not poor**, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.
(Emphasis added.)

6. Commencing in or about 1998, the Supreme Court of the State of Rhode Island established procedures for attorneys who are admitted to practice law in Rhode Island to do so in the form of a “limited liability entity” (“LLE”), provided that the LLE first applied for and received the Court’s authorization to do so. The process for obtaining the Court’s permission is embodied in Rule 10 of Article II of the Supreme Court Rules, which permits attorneys who are admitted to the practice of law in Rhode Island to engage in the practice of law through a “limited liability entity,” including a professional service corporation, a professional service

benefit corporation, a registered limited liability partnership, or a limited liability company.

Under Rule 10, LLEs must first register with the Defendant and obtain a license to operate as an LLE.

7. An LLE may be incorporated or organized outside the State of Rhode Island under Rule 10, so long as the entity has “one or more attorneys who are licensed and in good standing to practice law in this state.”

8. Upon information and belief, Defendant has regularly and routinely issued licenses to for-profit LLEs organized and/or incorporated under the laws of States other than Rhode Island.

9. Upon information and belief, in or about 2014, the Rhode Island Supreme Court adopted, and Defendant has regularly administered and enforced, Rule 11 of the Rules of the Supreme Court governing the practice of law by nonprofit organizations (hereinafter “nonprofits”).

10. Article II, Rule 11 of the Supreme Court Rules (“Rule 11”) governs the practice of law by nonprofit organizations as follows:

Nonprofit organizations **incorporated in this state** for the purpose of providing legal assistance **to the indigent** and that provide legal assistance to a defined and limited class of clients, may practice law in their own names through attorneys who are members of the Rhode Island Bar, subject to the approval of this Court. These organizations shall follow the application and registration requirements imposed on limited liability entities pursuant to Rule 10 but shall be exempt from the payment of application and registration fees. Organizations providing legal assistance pursuant to this rule may practice law under a trade name as approved by the Court.

(Emphasis added.)

11. Unlike for-profit LLEs that engage in the practice of law, nonprofits must be incorporated in this state in order to obtain a license to practice law pursuant to Rule 11.

12. Furthermore, only those nonprofits which limit their services “to the indigent” are eligible to obtain a license to practice law in Rhode Island pursuant to Rule 11.

13. Upon information and belief, Defendant has applied Rule 11 to nonprofits practicing or seeking to practice law in the State of Rhode Island (a) to require the issuance of a license for the nonprofit to practice law in the State; (b) to require that the Rule 11 nonprofit applicant demonstrate that the class of clients to which it intends to provide legal assistance is limited to “the indigent”; and (c) to deny a license to Rule 11 nonprofit applicants who are incorporated in a state other than Rhode Island.

14. Particularly, but not only, in view of the Court’s acknowledgment in the Preamble to Article V of its Rules, that many people, and not only the poor, cannot obtain adequate representation, the requirement in Rule 11 that nonprofits restrict their client base to “indigent” clients is unreasonable, arbitrary and is not narrowly tailored to serve a compelling state interest.

15. Article IV Section 2 of the United States Constitution provides that “The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”

16. The First Amendment to the U.S. Constitution protects the freedoms of speech, petition, association and assembly, which include association for the purposes of litigation designed to vindicate the rights of members of a specific community, as well as the right to petition for redress of grievances.

17. The Fourteenth Amendment to the U.S. Constitution provides that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

18. The requirement that nonprofits be incorporated in Rhode Island in order to be eligible for issuance of a license to practice law in Rhode Island is in violation of Article IV, Section 2 and the First and Fourteenth Amendments to the U.S. Constitution, as set forth below.

19. The requirement that nonprofits limit their provision of legal services exclusively “to the indigent” in order to be eligible for issuance of a license to practice law in Rhode Island is in violation of the First and Fourteenth Amendments to the U.S. Constitution, as set forth below.

B. The Mission and Services of SouthCoast Fair Housing

20. SCFH’s mission is to promote fair housing, eliminate prejudice and discrimination, and ensure fair and affordable housing opportunities for all through education and outreach, advocacy, and enforcement, including litigation services. SCFH serves persons who have suffered as a result of acts of discriminatory and unfair treatment in housing, without regard to their income or asset levels, in Rhode Island and in Bristol and Plymouth counties in Massachusetts.

21. SCFH is uniquely situated to advocate for its client population because it has developed expertise in handling claims under the Fair Housing Act and is dedicated to the vindication of such housing rights. Without SCFH’s assistance, the clients that it serves and intends to serve do not have the ability to meaningfully advocate for the protection of their rights to fair and equal housing opportunities. SCFH is directly engaged in these constitutionally protected activities, which Rule 11 curtails.

22. SCFH received grants for enforcement, including through litigation, throughout Rhode Island, and Bristol and Plymouth counties in Massachusetts, in response to any acts of

discriminatory and unfair treatment in housing in violation of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*

23. The protections of the Fair Housing Act extend to all persons and have no limitation based upon income status.

24. Consistent with its mission and the purposes of its grants, SCFH provides legal representation to persons who have suffered as a result of acts of discriminatory and unfair treatment in housing in Massachusetts, regardless of their income or assets.

25. Consistent with its mission and the purposes of its grants, SCFH's intent is to provide legal representation to persons who have suffered as a result of acts of discriminatory and unfair treatment in housing in Rhode Island, regardless of their income or assets, but is unable to provide such representation in its own name because it cannot practice law in Rhode Island due to Rule 11.

26. SCFH employs a staff counsel who is licensed in Rhode Island and through whom SCFH would be able to fulfill its mission and grant requirements by representing its clients in the name of SCFH in fair housing matters arising in Rhode Island, if it is able to obtain a license to practice law in its own name as a nonprofit organization.

27. On or about May 22, 2017, SCFH sent an application to the Defendant for a license to practice law as a nonprofit organization pursuant to Rule 11.

28. By Order dated September 29, 2017 (the "September 29 Order"), Defendant rejected SCFH's application for a license to practice because SCFH did not meet the requirements of Rule 11, in that (a) SCFH is not incorporated under the laws of the State of Rhode Island, and (b) SCFH does not limit its services exclusively to "indigent" persons.

29. As a direct result of the requirements of Rule 11, SCFH has refrained from providing legal services to Rhode Island clients or practicing law in Rhode Island, thereby undermining and impairing its advocacy, and its fulfillment of its mission and all aspects of its grant, and preventing it from providing litigation services to all of its target community.

30. SCFH has refrained from providing legal services to Rhode Island clients or practicing law in Rhode Island out of fear of prosecution by the State for the unauthorized practice of law and/or discipline of its staff counsel by the Rhode Island Supreme Court for violation of its rules.

C. The Claims Warrant Declaratory and Injunctive Relief.

31. There is a ripe and justiciable controversy pending between and among the parties because Rule 11 denies SCFH the right as a nonprofit corporation to practice law in Rhode Island on an equal basis with domestic nonprofit corporations and denies SCFH the ability to advocate for the rights of non-indigent victims of housing discrimination in Rhode Island. Therefore, this action involves an actual controversy within the meaning of the Declaratory Judgments Act, 28 U.S.C. § 2201.

32. SCFH has standing to sue in this action because it has been adversely affected by Rule 11. Specifically, SCFH applied for a license to practice law as a nonprofit corporation, which license was denied because it did not meet the requirements of Rule 11 to be organized within the state of Rhode Island and to restrict its services to indigent clients. As a result, SCFH is not able to fulfill its mission to advocate for persons in the State of Rhode Island who have suffered discriminatory and unfair treatment in violation of the Fair Housing Act, irrespective of their income level or indigent status.

33. SCFH has a cause of action pursuant to 42 U.S.C. § 1983 because the Defendant, under color of a “statute, ordinance, regulation, custom, or usage, of any State,” namely Rule 11, caused the deprivation of “rights, privileges, or immunities secured by the Constitution and laws,” as described more fully hereinafter.

34. SCFH has a direct and legitimate fear of prosecution of, or disciplinary enforcement against, the organization and/or attorneys associated with it should it purport to represent clients in Rhode Island without first obtaining a license to practice from the Defendant.

35. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). Among other things, the suppression of protected speech and restriction upon associational rights, whether by direct government interference or by self-censorship to avoid exposure to prosecution, constitutes irreparable harm.

36. SCFH has no adequate remedy at law.

37. The Defendant will suffer no harm if injunctive relief is granted. In fact, the purpose stated in the paragraph 6 to the Preamble to Article V, namely to encourage adequate representation for all persons including those who are not poor, will be furthered if the requested injunctive relief be granted.

38. The public interest will also suffer no harm if injunctive relief is granted. In fact, the public has a strong interest in encouraging private enforcement of civil and constitutional rights, including the rights advocated by SCFH.

Count I (SCFH First Amendment)

39. Plaintiff restates the allegations of Paragraphs 1-38 as if set forth fully herein.

40. Rule 11 violates the rights of SCFH to freedom of speech, petition, association and assembly, which include association for the purposes of litigation designed to vindicate the rights of members of a specific community, as well as the right to petition for redress of grievances in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

Count II (SCFH Due Process)

41. Plaintiff restates the allegations of Paragraphs 1-38 as if set forth fully herein.

42. Rule 11 denies Due Process to SCFH and the clients for whom it advocates because it denies a meaningful right of access to the courts to seek redress for discriminatory and unfair treatment in violation of the Fair Housing Act, without regard to economic status or economic capabilities.

Count III (SCFH Equal Protection)

43. Plaintiff restates the allegations of Paragraphs 1-38 as if set forth fully herein.

44. Rule 11 denies Equal Protection to SCFH and the clients for whom it advocates because Rule 11 permits nonprofits to practice law for a class of persons who are indigent, but denies the same right to nonprofits which serve persons who are not indigent, even though those persons have suffered an infringement of their federally protected rights to fair and equal housing.

45. Further, the requirement in Rule 11 that a nonprofit corporation be incorporated in the State of Rhode Island in order to practice law violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in that it denies citizens of other states the same right to practice law in the State of Rhode Island without a substantial reason for the difference in treatment and without bearing a substantial relationship to the State's objective.

Count IV (SCFH Privileges and Immunities)

46. Plaintiff restates the allegations of Paragraphs 1-38 as if set forth fully herein.

47. The requirement in Rule 11 that a nonprofit corporation be incorporated in the State of Rhode Island in order to practice law violates the Privileges and Immunities Clause of the Fourteenth Amendment and of Article IV § 2 of the United States Constitution in that it denies citizens of other states the same right to practice law in the State of Rhode Island without a substantial reason for the difference in treatment and without bearing a substantial relationship to the State's objective.

WHEREFORE, Plaintiff seeks Judgment in its favor, and against the Defendant, and seeks the following relief:

(i) A declaration that the requirement of Rule 11 that a nonprofit organization practicing law pursuant to that Rule may only represent "indigent" persons violates rights protected by the First and Fourteenth Amendment of the United States Constitution;

(ii) A declaration that the words "to the indigent," as used in Rule 11, are in violation of the constitutional rights of nonprofit organizations seeking to practice law in the State, and the corresponding rights of their clients and the constituencies they serve, in that such term effectively prevents those groups from representing the interests of their clients without regard to the economic status and economic capabilities of those clients;

(iii) A declaration that the requirement of Rule 11 that a nonprofit organization practicing law pursuant to that Rule must be organized under the laws of the State of Rhode Island violates the Privileges and Immunities Clause and the Equal Protection Clause of the Fourteenth Amendment and of Article IV § 2 of the United States Constitution;

(iv) Issuance of corresponding preliminary and permanent injunctive relief restricting Defendant, her agents and servants, and all persons acting in concert with her, from enforcing either the requirement of Rule 11 that nonprofit organizations must be organized within the State of Rhode Island or the requirement that nonprofit organizations must restrict their services “to the indigent;”

(v) Issuance of corresponding preliminary and permanent injunctive relief requiring Defendant, her agents and servants, and all persons acting in concert with her, to issue a license to practice law to South Coast Fair Housing, Inc.;

(vi) Plaintiff’s reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988 and on any other applicable grounds;

(vii) Plaintiff’s costs of suit in this action; and

(viii) Such other relief as this Court may deem just and proper in the circumstances.

SOUTHCOAST FAIR HOUSING, INC.,

By its Attorneys,

/s/ Mark W. Freel

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF RHODE ISLAND
Cooperating Counsel

Dated: September 26, 2018