

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ACTION FOR LIBERATION d/b/a
MICHIGAN LIBERATION, a Michigan
Nonprofit Corporation,
NICHOLAS SPAGNUOLO,
JULIA LONG-ACKLAND, and
GARY ACKLAND,

Plaintiffs,

Hon.

v.

Case No.

CITY OF WIXOM, a Municipal
Corporation, and LOON LAKE
WOODS - WIXOM
HOMEOWNERS ASSOCIATION,
INC., a Michigan Nonprofit Corporation,

Defendants.

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**VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE,
AND OTHER RELIEF**

Plaintiffs Action for Liberation d/b/a Michigan Liberation (hereinafter “Michigan Liberation”), Nicholas Spagnuolo, Julia Long-Ackland and Gary Ackland by their attorneys, bring this Verified Complaint for Declaratory, Injunctive Relief and Other Relief against Defendants City of Wixom (hereinafter “Wixom”) and Loon Lake Woods – Wixom Homeowners Association, Inc. (hereinafter the “Homeowners Association”) for the reasons that follow:

INTRODUCTORY STATEMENT

1. Plaintiffs file this 42 U.S.C. § 1983 action to challenge the constitutionality of a provision of a Wixom ordinance that bars individuals from canvassing in any residential neighborhood if the neighborhood association posts a sign banning canvassing at the entrance to the neighborhood.

2. The First Amendment to the United States Constitution protects the right of individuals to canvass door-to-door in neighborhoods with public streets.

3. Residential canvassing on political issues is a vital tool to our democracy. The free flow of speech “serves individual and societal interests in assuring informed and reliable decisionmaking.” *Bates v. State Bar of Arizona*, 97 S. Ct. 2691, 2699 (1977). With greater access to sources of information, the listener can more accurately test the validity of various viewpoints. *U.S. v. Playboy Entertainment Group, Inc.*, 120 S. Ct. 1878, 1888-89 (2000).

4. Wixom's Peddlers, Solicitors, and Canvassers ordinance Chapter 5.10 violates the First Amendment by making it a civil infraction to canvass homes along public streets in neighborhoods with "No Canvassing" signs posted at the entrance.

5. The ordinance is a content-based restriction on speech, it is not narrowly tailored to a compelling or important government interest, and it does not leave open ample, adequate means of communication. Furthermore, the ordinance is substantially overbroad.

6. Plaintiff Nicholas Spagnuolo, a Wixom resident, would have exercised his First Amendment right to canvass in certain neighborhoods in 2018 before the mid-term elections; however, he was deterred from doing so because of the Wixom ordinance and the fact that the neighborhood association posted "No Canvassing" signs.

7. There is a special election on May 7, 2019 in Wixom. Both Michigan Liberation and Mr. Spagnuolo want to canvass in neighborhoods with public street access – including neighborhoods with the offending "No Canvassing" signs – to educate residents about the issues in the election and to urge them to vote. However, unless this Court enjoins the unconstitutional provisions of the ordinance, they will not canvass in neighborhoods with "No Canvassing" signs

because they do not want to violate the law or be accused of violating the law by residents of those neighborhoods.

8. Plaintiffs Julia Long-Ackland and Gary Ackland (the “Acklands”) are residents of the Loon Lake Woods subdivision in Wixom. The Acklands are civic-minded individuals who want to engage with, and receive information from canvassers. However, the Acklands’ neighborhood association, Defendant Homeowners Association, acting pursuant to the Wixom ordinance, have posted a “No Canvassing” sign in the entrance to the Acklands’ neighborhood. As a result, canvassers no longer come to the Acklands home to engage with them about important topics of the day, including the upcoming May 7 election.

9. Plaintiffs bring this action against Wixom and the Homeowners Association to vindicate their First Amendment rights under the United States Constitution and 42 U.S.C. § 1983. Among the relief they seek is a declaration that their free speech rights are being violated and a temporary, preliminary and permanent injunction allowing them to canvass and receive canvassers’ messages in public residential neighborhoods in Wixom.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1343, because federal questions are presented in this action under the First Amendment of the United States Constitution and 42 U.S.C. §1983.

11. Venue is proper under 28 U.S.C. §1391(b)(1) and (2) because this is a judicial district where all defendants reside and where a substantial part of the events or omissions giving rise to the claims occurred or will occur.

PARTIES

12. Plaintiff Action for Liberation d/b/a Michigan Liberation is a non-profit organization organized under the laws of the State of Michigan with a principal place of business in Detroit, which falls within the Eastern District of Michigan

13. Plaintiff Nicholas Spagnuolo is a resident of the City of Wixom in Oakland County, which falls within the Eastern District of Michigan.

14. Plaintiff Julia Long-Ackland is a resident of the City of Wixom in Oakland County, which falls within the Eastern District of Michigan.

15. Plaintiff Gary Ackland is a resident of the City of Wixom in Oakland County, which falls within the Eastern District of Michigan.

16. Defendant City of Wixom is a municipal corporation located in Oakland County, Michigan, which falls within the Eastern District of Michigan.

17. Defendant Loon Lake Woods – Wixom Homeowners Association, Inc. is a Michigan nonprofit corporation located in the City of Wixom in Oakland County, which falls within the Eastern District of Michigan.

STATEMENT OF FACTS

A. The City of Wixom's Anti-Canvassing Ordinance.

18. Chapter 5.10 of the Wixom City Code regulates canvassing activities in the city's public residential neighborhoods (Exhibit A).

19. Chapter 5.10.079 (the "ordinance") states, in relevant part,

No peddler, solicitor, or canvasser shall engage in peddling, soliciting, or canvassing in any residential subdivision, condominium or other neighborhood that has a privately posted "no peddling," "no solicitation," "no soliciting," "no canvassing" or "no trespassing" sign, or similar notice at each entrance to the subdivision, condominium or other neighborhood, in accordance with subsection (C), below.

(Ex. A, Ch. 5.10.079(B) (2017)).

20. Canvassing is defined by the Code as:

to enter upon private property, without any prior specific invitation or appointment, to inform, educate, advocate, petition, secure petition signatures, request or enlist support or opposition, or to convey any other message regarding religion, philosophy, ideology, politics, including parties, candidates, initiatives and issues, charitable organizations, or other cause or issue, by verbal, written, or other forms of communication, including the distribution of handbills, flyers, or other materials.

(Ex. A, Ch. 5.10.020).

21. Violations of Chapter 5.10.079(B) are a civil infraction, punishable by a fine and any other costs, damages, and expenses provided by law. (Ex. A, Ch. 5.10.022; Ch. 13.04.810).

22. Individuals violate the ordinance if for example, they enter a neighborhood with a “No Canvassing” sign posted at the entrance to the neighborhood or subdivision and knock on doors asking residents whether they were registered to vote. (Ex. A, Ch. 5.10.079(B)).

B. “No Canvassing” Signs Posted in Neighborhoods and Subdivisions with Public Street Access, Including Loon Lake Woods.

23. Several neighborhoods and subdivisions in Wixom with public street access have chosen to erect “No Canvassing” and “No Solicitation” signs at each entrance to the neighborhood or subdivision.

24. Some neighborhoods with “No Canvassing” signs have public street access and are maintained by the city. Wixom provides garbage pickup and snow plowing services to these neighborhoods.

25. Loon Lake Woods is one of the many public subdivisions in Wixom that has a posted sign at each entrance to the subdivision stating, “No Soliciting, No Peddling, No Canvassing. City of Wixom Ordinance Section 5.10.079.” (Ex. B).

26. The decision to prohibit canvassers and canvassing from the entire neighborhood of Loon Lake Woods was made by the board of the Defendant Homeowners Association without a vote of the membership.

C. Plaintiffs Julia Long-Ackland and Gary Ackland.

27. However, not all residents in the Loon Lake Woods subdivisions want to prohibit canvassing in the neighborhood.

28. Plaintiffs Julia Long-Ackland and Gary Ackland live in the Loon Lake Woods subdivision managed by Defendant Homeowners Association.

29. The Acklands want to receive information from political, religious and charitable canvassers at their home because it is a convenient way for them to keep up to date on issues in their city. The Acklands enjoy hearing from those knowledgeable individuals about the important issues of the day and enjoy engaging in discussion with canvassers.

30. The Acklands have not decided how they want to vote in the upcoming special election on May 7, 2019 and hope to receive information from different perspectives on the school bond issue.

31. Similarly, the Acklands rely in part on door-to-door canvassers to learn about political candidates running for office. They hope to receive information about the various 2020 presidential candidates from canvassers in their neighborhood.

32. Unless enforcement of the Wixom ordinance is enjoined, the Acklands will not be visited by canvassers about any of the important issues in the nation and in their community, including before the May 7 election.

33. The Acklands raised their concerns over the challenged ordinance to the president of the Defendant Homeowners Association and by speaking out at a City Council meeting. However, their concerns were ignored.

D. Michigan Liberation.

34. Plaintiff Michigan Liberation is a statewide organization dedicated to developing leadership qualities in community members and creating effective campaigns to advance racial, gender, economic and environmental justice in Michigan.

35. One of Michigan Liberation's primary goals is to end mass incarceration.

36. In advance of the 2018 mid-term election, Michigan Liberation sent canvassers to Wixom to meet with residents, share information about criminal justice reform, and ask about what issues they face in their community.

37. For that election, Michigan Liberation canvassers knocked on more than 2,500 doors and spent approximately 100 hours talking to residents.

38. Wixom residents in those areas welcomed the canvassers. Michigan Liberation canvassers were routinely told by the residents that they appreciated having someone come to their door to talk about community concerns and learn more about opportunities for criminal justice reform.

39. In part because of Michigan Liberation’s canvassing efforts, Wixom’s Third Precinct had one of the highest voter turnout rates for a mid-term election. Wixom has become a priority area for Michigan Liberation.

40. Michigan Liberation plans to send canvassers to Wixom again ahead of the May 7, 2019 election and the presidential election in 2020.

41. Their hope is to begin canvassing in Wixom immediately in residential neighborhoods and subdivisions, including those with “No Canvassing” signs.

42. Although Michigan Liberation wants to canvass in all public residential neighborhoods, including ones with “No Canvassing” signs, it will not send canvassers into neighborhoods that prohibit canvassing.

43. Michigan Liberation fears that if they send canvassers into neighborhoods with “No Canvassing” signs, residents will call the police on them and the canvassers will be deterred from canvassing in the future.

44. But for Chapter 5.10, Michigan Liberation would immediately send canvassers door-to-door in neighborhoods with public street access and “No Canvassing” signs posted, including the Loon Lake Woods subdivision managed by Defendant Homeowners Association.

E. Plaintiff Nicholas Spagnuolo.

45. In or around October 2018, Plaintiff Nicholas Spagnuolo began canvassing neighborhoods in Wixom for Democratic candidates and in support of Proposal 2, a ballot initiative creating a state constitutional amendment to end gerrymandering.

46. Mr. Spagnuolo, a novice canvasser wanted to get involved in political issues he felt passionate about during the mid-term elections.

47. While canvassing in neighborhoods with public streets, Mr. Spagnuolo did not knock on doors or approach homes when there was a visible “No Canvassing” sign posted on the front of the house.

48. Mr. Spagnuolo was canvassing with a partner in the Loon Lake Woods subdivision for the One Michigan campaign when he was stopped by a resident and told that he could not canvass in the neighborhood.

49. The Loon Lake Woods resident told Mr. Spagnuolo that the neighborhood had erected a “No Canvassing” sign at the entrance under the Wixom ordinance so that canvassers like him would not approach any homes in the area with their political messages.

50. The resident threatened to call the police to enforce Wixom’s ordinance banning canvassing in designated neighborhoods if Mr. Spagnuolo continued knocking on doors.

51. Mr. Spagnuolo left the neighborhood immediately.

52. The following week, Mr. Spagnuolo was canvassing with his family in support of Proposal 2 when he was stopped by a resident in the Highgate On The Green neighborhood.

53. The Highgate On The Green neighborhood or subdivision has a sign posted at the entrance to the neighborhood stating, “No Peddling, No Solicitation, No Soliciting, No Canvassing, No Trespassing, City of Wixom Ordinance 5.10.010.” (Ex. C).

54. The Highgate On The Green resident confronted Mr. Spagnuolo on the street and accused him of violating the Wixom ordinance and the posted “No Canvassing” sign and told him to leave the neighborhood.

55. Mr. Spagnuolo did not canvass in Wixom neighborhoods with “No Canvassing” signs after those two incidents but would like to canvass in the future.

56. Mr. Spagnuolo wishes to canvass in Loon Lake Woods ahead of the May 7 election but will not do so because he fears enforcement of the ordinance and retaliation from Loon Lake Woods residents.

57. Additionally, Mr. Spagnuolo wants to canvass in all residential neighborhoods with public street access, including neighborhoods and subdivisions with “No Canvassing” signs, before the special election in Wixom on May 7, 2019.

58. Mr. Spagnuolo wants to canvass in public residential neighborhoods with “No Canvassing” signs in the future on issues which he feels passionate about, including before the 2020 presidential election.

59. However, to comply with the law, Mr. Spagnuolo will not canvass in public neighborhoods with “No Canvassing” signs posted at the entrances.

However, if the ordinance is enjoined, he will canvass in these neighborhoods.

F. Wixom City Council Refused to Remove the Anti-Canvassing Provision of the Ordinance.

60. In December 2018, Plaintiffs Spagnuolo and the Acklands testified at a Wixom City Council meeting against Chapter 5.10.079(B) and in favor of an amendment which would have stricken the provision authorizing neighborhood associations to ban canvassers from their neighborhood.

61. After receiving public comment from the Homeowners Association’s president and residents who were in favor and opposed to the amendment, the Wixom City Council voted not to adopt the amendment.

CAUSE OF ACTION

**VIOLATION OF THE FIRST AMENDMENT
AND 42 U.S.C. § 1983 – ALL DEFENDANTS**

62. Plaintiffs re-allege and incorporate by reference the allegations contained in the previous paragraphs as if fully set forth herein.

63. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech. The First Amendment is incorporated against the States by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

64. A regulation of the time, place or manner of protected speech by a state actor is unconstitutional unless it (1) is content neutral; (2) is narrowly tailored to further the city's compelling interests; and (3) leaves open ample alternative channels for communication of the information.

65. Chapter 5.10.079(B) and (C) of Wixom's Peddlers, Solicitors and Canvassers ordinance, which bars canvassing in neighborhoods that post "No Canvassing" signs, is not content-neutral.

66. Chapter 5.10.079(B) and (C) of Wixom's Peddlers, Solicitors and Canvassers ordinance is not narrowly tailored to promote either a compelling or significant state interest.

67. Chapter 5.10.079(B) and (C) of Wixom's Peddlers, Solicitors and Canvassers ordinance does not leave open ample alternative channels for communication of canvassing information.

68. Additionally, Chapter 5.10.079(B) and (C) is substantially overbroad because it prevents and deters a substantial amount of First Amendment-protected speech and conduct.

69. Chapter 5.10.079(B) and (C) of Wixom's Peddlers, Solicitors and Canvassers ordinance violates the First Amendment of the United States Constitution on its face.

70. Chapter 5.10.079(B) and (C) of Wixom's Peddlers, Solicitors and Canvassers ordinance violates the First Amendment of the United States Constitution as applied to Plaintiffs.

71. Chapter 5.10.079(B)'s delegation of authority to neighborhoods and subdivisions to decide whether to post a "No Canvassing" sign does not shield Wixom from constitutional liability.

72. The City of Wixom is liable under 42 U.S.C. § 1983 for violating Plaintiffs' First Amendment rights because it is a municipal corporation acting under color of law and enacted Chapter 5.10.

73. Defendant Homeowners Association was acting under color of law for the purposes of 42 U.S.C. § 1983 and is liable for violating Plaintiffs' First Amendment rights to canvass in the Loon Lake Woods neighborhood because:

- a. by regulating the right to canvass in homes in a neighborhood with public streets, it is performing a government function;

- b. it is acting in concert with the City of Wixom in banning canvassing in the Loon Lake Woods subdivision;
- c. it has a symbiotic relationship with the City of Wixom with respect to banning canvassing in the Loon Lake Woods subdivision.
- d. its actions are inextricably entangled with Wixom ordinance 5.10.079(B) and (C), which delegates authority to neighborhoods to ban canvassing activities.

74. As a direct and proximate result of Defendants' actions, Plaintiffs Michigan Liberation and Nicholas Spagnuolo have suffered damages, including violation of their constitutional right to engage in door-to-door canvassing, and emotional distress.

75. If an injunction is not entered enjoining enforcement of Chapter 5.10.079(B) and (C), Plaintiffs Michigan Liberation and Nicholas Spagnuolo will suffer imminent harm because they will not be able to canvass in "No Canvassing" neighborhoods prior to the May 7 election or anytime thereafter.

76. As a direct and proximate result of Defendants' actions, Plaintiffs Julia Long-Ackland and Gary Ackland have suffered damages, including violation of their constitutional right to receive information from, and engage with, door-to-door canvassing, and emotional distress.

77. If an injunction is not entered, Plaintiffs Julia Long-Ackland and Gary Ackland will suffer imminent harm because they will not be able to receive information from, or engage with, canvassers prior to the May 7 election or anytime thereafter.

78. There is no adequate remedy at law for the imminent or future harm Plaintiffs will suffer if an injunction is not entered.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Plaintiffs’ constitutional rights have been and are being violated;
2. Declare that Chapter 5.10.079(B) and (C) of Wixom’s Peddlers, Solicitors and Canvassers ordinance violates the First Amendment of the United States Constitution;
3. Grant a temporary restraining order, preliminary injunction and permanent injunction:
 - a. enjoining Defendants from enforcing Chapter 5.10.079(B) and (C) to the extent they bar canvassing in neighborhoods and subdivisions with public streets;
 - b. requiring Defendant Homeowners Association to remove its posted “No Canvassing” sign and directing Defendant Wixom to notify all

other neighborhoods and subdivisions with public streets to remove any “No Canvassing” sign posted at the entrance to the neighborhood; and

- c. requiring Defendant Wixom to notify, in writing, each resident of a neighborhood or subdivision with a “No Canvassing” sign that Chapter 5.10.079(B) and (C) are not enforceable.
4. Award Plaintiffs compensatory and nominal damages;
5. Award Plaintiffs reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988; and
6. Grant any other relief the Court deems appropriate.

Respectfully submitted,

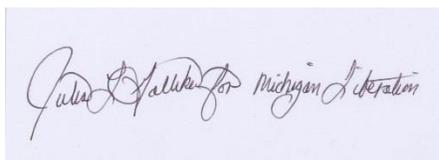
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Dated: April 22, 2019

DECLARATION OF ACTION FOR LIBERATION
d/b/a MICHIGAN LIBERATION

I, Julia Galliker on behalf of Action for Liberation d/b/a Michigan Liberation, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the factual allegations concerning Michigan Liberation in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

A rectangular box containing a handwritten signature in cursive script that reads "Julia Galliker for Michigan Liberation".

Julia Galliker on behalf of Action for Liberation
d/b/a Michigan Liberation

Dated: April 22, 2019

DECLARATION OF Nicholas Spagnuolo

I, Nicholas Spagnuolo resident of Wixom, Michigan, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the factual allegations concerning me in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.



[NAME] NICHOLAS SPAGNUOLO

Dated: 4/19/19

DECLARATION OF Julia Long-Ackland

I, JULIA Long-Ackland resident of Wixom, Michigan, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the factual allegations concerning me in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

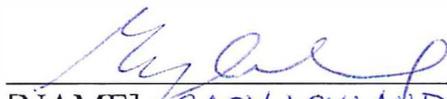
Julia Long-Ackland

[NAME] JULIA LONG-ACKLAND

Dated: 4.19.19

DECLARATION OF GARY ACKLAND

I, GARY ACKLAND, resident of Wixom, Michigan, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the factual allegations concerning me in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.



[NAME] GARY ACKLAND

Dated: 4/19/19

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019 I electronically filed the foregoing document through the court's electronic filing system, and that the court will serve opposing counsel through the electronic filing system.

/s/ Bonsitu Kitaba-Gaviglio (P78822)
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