

2. Defendant East Hanover Township (“Township”) is a political subdivision of the Commonwealth of Pennsylvania and is located in Dauphin County, Pennsylvania.

3. Defendant Light-Heigel & Associates, Inc. (“Light-Heigel”) is a corporation organized and subsisting pursuant to the laws of the Commonwealth of Pennsylvania which maintains a regular place of business at 805 Estelle Drive, Suite 111, Lancaster, Lancaster County, Pennsylvania 17601. Light-Heigel at all times relevant hereto served as the authorized code enforcement officer for Defendant Township.

4. Defendants at all times relevant hereto acted through one or more authorized agents or employees.

JURISDICTION AND VENUE

5. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343, conferring original jurisdiction upon the various district courts of the United States for civil actions authorized by law to be commenced by any person to recover damages under any Act of Congress. This suit is authorized pursuant to 42 U.S.C. § 1983. An award of costs and attorney’s fees is authorized pursuant to 42 U.S.C. § 1988.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the Middle District of Pennsylvania is the district in which a

substantial part of the events giving rise to the claim occurred.

FACTS

7. On or about July 14, 2010, Kliss put up a sign on his property (“Sign”) at 436 Pheasant Road, East Hanover Township, Dauphin County, Pennsylvania.

8. The Sign stated “\$10,000 TO TAKE A CRAP[.]” A true and correct picture of the Sign is attached hereto as Exhibit “A” and incorporated herein by reference.

9. Plaintiff erected such sign to protest a proposed mandatory sewer tie-in for his property which was pending before the Township’s board of supervisors, the cost of which would be several thousand dollars.

10. On or about July 22, 2010, the Township through its authorized code enforcement officer, Light-Heigel, issued an “ENFORCEMENT NOTICE” to plaintiff (“Enforcement Notice”). A true and correct copy of such Notice, bearing certain non-original scribbled markings, is attached hereto as Exhibit “B” and incorporated herein by reference.

11. The Enforcement Notice notified plaintiff that the Sign was in violation of the East Hanover Township Zoning Ordinance (“Zoning Ordinance”) for, *inter alia*, violating Section 314.2.13 thereof which states,

No Loud, Vulgar, Indecent, or Obscene Advertising matter shall be displayed in any manner, including, but not limited to:

- A. Any graphic illustration pertaining to specified sexual activities and/or specified anatomical areas; and
- B. Scenes wherein artificial devices are employed to depict, or drawings are employed to portray any of the prohibited signs, photographs or graphic representations described above[.]

Zoning Ordinance, § 314.2 (hereafter referred to as “Vulgar/Indecent/ Obscene” provision). A true and correct copy of the provision of the zoning ordinance pertaining to signs is attached hereto as Exhibit “C” and incorporated herein by reference.

12. The Terms “Loud,” “Vulgar,” “Indecent” and “Obscene” are nowhere defined in the Ordinance.

13. The Sign contained no “graphic illustration pertaining to specified sexual activities and/or specified anatomical areas[.]”

14. The Sign further contained no “[s]cenes wherein artificial devices are employed to depict, or drawings are employed to portray any of the prohibited signs, photographs or graphic representations described[.]” in the Ordinance.

15. Defendants Township and Light-Heigel, under color of law, prohibited plaintiff to speaking out, protesting in writing and petitioning government against the proposed mandatory sewer tie-in that was then

pending before the East Hanover Board of Supervisors.

16. Plaintiff attempted to avoid legal prosecution for violation of the Vulgar/Indecent/Obscene provision by painting a white strip over the word “crap” and re-posting the sign in a manner that did not transgress any other provisions of the Sign Ordinance invoked by defendants in the Enforcement Notice.

17. Enforcement of the Vulgar/Indecent/Obscene provision of the Sign Ordinance has violated and continues to violate plaintiff’s rights to freedom of speech, press and petitioning of government under the First Amendment to the Constitution of the United States.

18. The Vulgar/Indecent/Obscene provision of the Sign Ordinance is void for vagueness under the Due Process clause of the Fourteenth Amendment.

**FIRST CAUSE OF ACTION – DECLATORY RELIEF
“Vulgar/Indecent/Obscene” PROVISION OF ZONING ORDINANCE
FACIALLY OVERBROAD UNDER FIRST AMENDMENT
U.S. Const. amends. I, XIV; 42 U.S.C. § 1983**

19. The averments of the foregoing paragraphs are incorporated herein by reference as if set forth at length.

20. The “Vulgar/Indecent/Obscene” provision of the Sign Ordinance constitutes a content-based restriction on speech.

21. The Vulgar/Indecent/Obscene provision of the Sign Ordinance violates plaintiff's First Amendment right to freedom of speech and press as incorporated against the States by the Fourteenth Amendment.

22. The Sign Ordinance is facially unconstitutional in that it exerts a prior restraint or imposes a subsequent penal sanction on Kliss's First Amendment right to speak, protest in writing, and petition government about the way in which the Township is conducting its business.

23. The Vulgar/Indecent/Obscene provision of the Sign Ordinance is overly broad in that it prohibits both speech that is protected and that which arguably is not.

24. The First Amendment does not permit any statute or enactment to prohibit by prior restraint or subsequent penal sanction a private citizen from stating his opinion against an action, or proposed action, of government unless such communication satisfy certain exceptional criteria, none of which are applicable to the sign posted by plaintiff.

25. This Court must declare the "Vulgar/Indecent/Obscene" provision of the Sign Ordinance violative of the First Amendment as an unconstitutional prior restraint or subsequent penal sanction on Kliss's First Amendment right to speak, protest in writing, and petition government about the way in which the Township is conducting its business.

WHEREFORE, Plaintiff prays this Honorable Court to DECLARE that section 314.2(13) of East Hanover Township's Zoning Ordinance to be FACIALLY UNCONSTITUTIONAL and OVERLY BROAD under the First Amendment, and plaintiff further prays this Honorable Court to award attorneys' fees, costs of suit and whatsoever other relief as shall be just and equitable.

**SECOND CAUSE OF ACTION – DECLATORY RELIEF
“Vulgar/Indecent/Obscene” PROVISION OF ZONING ORDINANCE
VIOLATIVE OF FIRST AMENDMENT RIGHTS TO
SPEECH, PRESS AND PETITION (AS APPLIED)
U.S. Const. amends. I, XIV; 42 U.S.C. § 1983**

26. The averments of the foregoing paragraphs are incorporated herein by reference as if set forth at length.

27. The “Vulgar/Indecent/Obscene” provision of the Sign Ordinance constitutes a content-based restriction on speech as interpreted and applied by East Hanover Township and Light-Heigel and unconstitutionally violates plaintiff's First Amendment right to protest in writing about the way in which the Township is conducting its business.

28. The First Amendment does not permit any statute or enactment to prohibit by prior restraint or subsequent penal sanction a private citizen from stating his opinion against an action, or proposed action, of government

unless such communication satisfy certain exceptional criteria, none of which is applicable to the sign posted by plaintiff.

29. This Court must declare the “Vulgar/Indecent/Obscene” provision of the Sign Ordinance violative of the First Amendment as applied to plaintiff, and an unconstitutional prior restraint or subsequent penal sanction on Kliss’s First Amendment right to protest in writing about the way in which the Township is conducting its business.

WHEREFORE, Plaintiff prays this Honorable Court to DECLARE section 314.2(13) of East Hanover Township’s Zoning Ordinance to be UNCONSTITUTIONAL under the First Amendment AS APPLIED to Kliss’s sign stating “\$10,000 to take a crap[,]” and plaintiff further prays this Honorable Court to award attorneys’ fees, costs of suit and whatsoever other relief as shall be just and equitable.

**THIRD CAUSE OF ACTION – DECLARATORY RELIEF
SIGN ORDINANCE VAUGE FOR VAGUENESS
U.S. Const. amend. XIV; 42 U.S.C. § 1983**

30. The averments of the foregoing paragraphs are incorporated herein by reference as if set forth at length.

31. The Sign Ordinance nowhere defines the terms “[l]oud,” “[v]ulgar,” “[i]ndecent” or “[o]bscene[.]”

32. The Sign Ordinance forbids the doing of an act in terms “so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *United States v. Lanier*, 520 U.S. 259 (1997).

33. The Sign Ordinance is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment.

34. Plaintiff is not on “fair notice” of what is prohibited and the Sign Ordinance is so standardless that it encourages discriminatory enforcement. *Holder v. Humanitarian Law Project*, ___ U.S. ___, 130 S.Ct. 2705 (2010).

WHEREFORE, Plaintiff prays this Honorable Court to DECLARE section 314.2(13) of East Hanover Township’s Zoning Ordinance to be FACIALLY UNCONSTITUTIONAL, VOID FOR VAGUENESS, and UNCONSTITUTIONAL AS APPLIED to Kliss’s sign stating “\$10,000 to take a crap[,]” in violation of plaintiff’s Fourteenth Amendment right to due process, and plaintiff further prays this Honorable Court to award attorneys’ fees, costs of suit and whatsoever other relief as shall be just and equitable.

**FOURTH CAUSE OF ACTION – INJUNCTIVE RELIEF
SIGN ORDINANCE’S VIOLATION OF PLAINTIFF’S FIRST AND
FOURTEENTH AMENDMENT RIGHTS TO
SPEECH, PRESS, PETITION AND DUE PROCESS
U.S. Const. amends. I, XIV; 42 U.S.C. § 1983**

35. The averments of the foregoing paragraphs are incorporated herein by reference as if set forth at length.

36. The Sign Ordinance’s violations of the First Amendment require this Court to enter a permanent injunction to restrain defendants from prospectively subjecting plaintiff to future administrative, civil or criminal proceedings, penalties, liability or other adverse action under the afore-cited constitutionally-deficient provisions of the Sign Ordinance.

37. The Due Process clause of the Fourteenth Amendment requires this Court to permanently enjoin and restrain defendants from prospectively enforcing the Sign Ordinance because it is unconstitutionally vague under the Fourteenth Amendment.

38. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Honorable Court to enter an order in substantially the following form:

- a. Defendants East Hanover Township, Light-Heigel & Associates, Inc., and its employees and agents, are

PERMANENTLY ENJOINED from enforcing the Vulgar/

Indecent/Obscene provision of the Sign Ordinance; and

- b. Reasonable attorney's fees and costs of suit are awarded to plaintiff.

**FIFTH CAUSE OF ACTION -- DAMAGES
VIOLATIONS OF FIRST AND FOURTEENTH AMENDMENTS
U.S. Const. amends. I, XIV; 42 U.S.C. § 1983**

39. The averments of the foregoing paragraphs are incorporated herein by reference as if set forth at length.

40. The Sign Ordinance, both facially and as applied, has unconstitutionally suppressed plaintiff's rights of speech, press and petition under the First Amendment.

41. The Sign Ordinance, both facially and as applied, is unconstitutionally vague and has allowed for discriminatory enforcement of its terms against plaintiff.

42. As a result of the unconstitutionality of the Sign Ordinance, both facially and as applied, plaintiff has suffered a loss of the aforesaid First Amendment and Fourteenth Amendment rights and suffered oppression, humiliation and embarrassment for which he must be compensated.

WHEREFORE, Plaintiff prays this Honorable Court to award damages as shall be just for defendants' curtailment of his First Amendment rights, attorneys' fees, costs of suit and whatsoever other relief as shall be just and equitable.

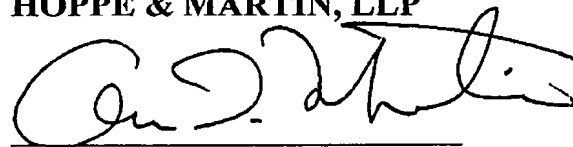
DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury of twelve (12) on all matters so triable.

Respectfully submitted,

HOPPE & MARTIN, LLP

By:



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