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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

OHIO CITIZEN ACTION,  
614 W. Superior Avenue  
Cleveland, Ohio 44113

Plaintiff,

-v-

VILLAGE OF CANAL WINCHESTER,  
36 South High Street  
Canal Winchester, Ohio 43110

Defendant.

CASE NO: **2 : 0 9 cv 3 3 1**

JUDGE **JUDGE MARBLEY**  
**MAGISTRATE JUDGE ABEL**

PLAINTIFF'S COMPLAINT  
FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF, AND  
DAMAGES (with attached  
declaration)

INTRODUCTION

1. This is an action for declaratory relief, preliminary and permanent injunctive relief, and damages against the Village of Canal Winchester ("Canal Winchester" or "the Defendant") which has unconstitutionally burdened the expressive activities of the Plaintiff, Ohio Citizen Action ("Citizen Action" or "the Plaintiff"). Citizen Action seeks a declaration that the Village of Canal Winchester's new Ordinance regulating expressive canvassing activities is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution, as well as an injunction against its continued operation and monetary damages.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and U.S. Const. Amends. I, and XIV. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331,

1343. Citizen Action's claim for declaratory relief exists under 28 U.S.C. §§ 2201 and 2202.

### PARTIES

3. Citizen Action is a grassroots organization of individuals engaged in efforts to educate members of the community, mobilize the support of Ohioans, and defend the public's interest in economic and environmental decision-making at the local, state, and national levels.

4. Citizen Action is duly incorporated as a non-profit corporation of the State of Ohio.

5. Citizen Action is recognized by the State of Ohio as a "charitable organization" under the Ohio Charitable Solicitation Act, Chapter 1716, Ohio Revised Code, and is registered with the Attorney General of Ohio under § 1716.02 of that Act, registration number 315-15.

6. The Internal Revenue Service recognizes Citizen Action as exempt from Federal income taxation as an organization that promotes social welfare under § 501(c)(4) of the Internal Revenue Code.

7. Citizen Action has for many years engaged in door-to-door canvassing throughout Ohio for the purpose of communicating with Ohio residents about civic issues of public interest and obtaining members, donations, and signatures on petitions. At each residence where a willing adult is home, canvassers discuss current public policy issues, listen to the resident's opinion, distribute educational materials about such civic issues free of charge, encourage grassroots lobbying, ask for signatures on petitions to public officials, and seek membership dues and contributions to support Citizen Action's expressive activities. Funds raised by the canvass benefit Citizen

Action's activities. Citizen Action has enrolled more than 80,000 members in Ohio, including members in Canal Winchester; and has organizational standing to pursue this litigation.

8. Citizen Action's civic public policy issues include many environmental and expressive issues which directly affect the residents of Canal Winchester as voters, consumers, and area residents.

9. Canal Winchester is a village organized under the laws of Ohio, situated in Franklin County.

10. Canal Winchester and its agents and employees performed all acts described in this complaint under color of state law and in accordance with established policies, practices, and customs.

#### THE ORDINANCE

11. An authentic copy of Canal Winchester's Chapter 713 (hereinafter, "the ordinance") is attached as **Exhibit A**.

#### FACTUAL ALLEGATIONS

12. Over the past 15 years, representatives of Citizen Action have regularly canvassed from door-to-door in Canal Winchester without incident or impediment. Prior to canvassing, Citizen Action as a courtesy has provided the names of its canvassers to Canal Winchester officials and apprised them of the dates that canvassers would be contacting residents, typically between the hours of 4:00 p.m. and 9:00 p.m.

13. In November and December of 2007, representatives of Citizen Action contacted officials in Canal Winchester to apprise them of Citizen Action's plan to canvass in Canal Winchester in the Spring of 2008. On December 13, 2007, Nasia Osborne on behalf of Canal Winchester informed Kate Russell that because Citizen was

not "selling" products, its representatives could canvass in Canal Winchester between the hours of 4:00 p.m. and 9:00 p.m.

14. On March 3, 2008, the Canal Winchester Village Council heard the first reading of the Ordinance, captioned "AN ORDINANCE TO REPEAL EXISTING CHAPTER 713 OF THE VILLAGE CODE, TO ADOPT NEW CHAPTER 713 OF THE VILLAGE CODE REGARDING PEDDLERS AND SOLICITORS, TO ESTABLISH PEDDLERS [sic] AND SOLICITORS [sic] REGISTRATION PROCESS, AND DECLARING AN EMERGENCY." According to the Council's minutes of March 3, 2008, Ms. Osborne stated: "the emergency clause is not in there to suspend the second and third reading, but to let the ordinance go into immediate effect if it is passed. This will better prepare the Village for the spring."

15. On April 3, 2008, Kate Russell of Citizen Action informed Canal Winchester of Citizen Action's desire to canvass from door-to-door in Canal Winchester from April 9, 2008, to July 25, 2008, between the hours of 4:00 p.m. and 9:00 p.m. As a courtesy, Ms. Russell also provided Canal Winchester with a canvassing staff list, and a request to canvass. See **Exhibit B**.

16. On April 4, 2008, Amanda Parker of Canal Winchester informed Ms. Russell via a letter sent by FAX that the Village Council "is meeting on Monday, April 7<sup>th</sup> and will be passing new legislation that requires solicitors to fill out a registration form for each person that will be in the Village of Canal Winchester. This legislation, upon passage, will become effective immediately." A copy of this letter is attached as **Exhibit C**.

17. Canal Winchester passed its new ordinance, Chapter 713, imposing numerous restrictions on the activities of "Canvassers," "Peddlers," and "Solicitors," on

April 7, 2008, and it became effective on that date. The ordinance defines “solicitors” to include any canvassers who “seek to obtain funds for any cause whatsoever.” Ordinance at §713.01(e). It requires some (but not all) solicitors, *inter alia*, to pay a license fee annually, to provide detailed personal information about each canvasser, to submit a background check completed by law enforcement authorities regarding each canvasser, and strictly limits canvassing door-to-door and in public fora to the hours between 9 a.m., and sunset or 7:30 p.m., whichever is earlier. Anyone who fails to comply with any provision of the ordinance is guilty of a fourth-degree misdemeanor. Ordinance at § 713.99.

18. Counsel to Canal Winchester Corey Colombo initially assured Ms. Russell on April 28, 2008, that Citizen Action’s representatives were exempt from the annual license application requirements of §713.03 applicable to peddlers and solicitors. However, Mr. Colombo indicated that Citizen Action would still be subject to the curfew restrictions of § 713.07 placing severe limits on the hours, days, and places that Citizen Action’s canvassing activities can occur. See Declaration of Kate Russell at ¶ 3, attached as **Exhibit D**.

19. Representatives of Citizen Action, in an effort to resolve this matter amicably, supplied current legal authorities demonstrating that the Ordinance violates the First Amendment rights of prospective speakers in numerous ways. After months of review, counsel for Canal Winchester eventually indicated that Canal Winchester has reversed its original position that Citizen Action is exempt from the licensing requirement, and stated that it now considers canvassers for Citizen Action to be “solicitors,” owing to the fact that they “mix dissemination of ideas with fundraising.”

20. Canal Winchester through its ordinance has prevented, and will in the future prevent, Citizen Action from canvassing in Canal Winchester unless it complies with the rules that the ordinance establishes for peddlers and solicitors.

21. Citizen Action, because it refuses to abide by what it believes to be pervasively unconstitutional and unlawful limitations on its First Amendment rights by Canal Winchester, has been unable to canvass in Canal Winchester since the ordinance became effective.

COUNT ONE (Declaratory Relief for First Amendment Violations)

22. The Plaintiffs incorporate by reference all of the foregoing paragraphs as if fully set forth herein.

23. Declaratory relief from this Court will resolve these controversies and limit the uncertainties created by the Defendants' unconstitutional denial of Plaintiffs rights secured by the First and Fourteenth Amendments to the United States Constitution.

24. A real, substantial and immediate controversy is presented regarding the rights, duties, and obligations of the parties. Plaintiff therefore requests declaratory judgment from this Court pursuant to Rule 57 of the Federal Rules of Civil Procedure that Canal Winchester through its ordinance has Plaintiff's rights guaranteed under the First and Fourteenth Amendments to the United States Constitution.

25. Canal Winchester has violated and continues to violate the Plaintiffs' rights to free expression under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983, by their actions including, as is described more fully below.

26. Section 713.02 unconstitutionally imposes a content-based licensing requirement on solicitors and peddlers insofar as it requires canvassers who ask for

funds to comply with the onerous licensing requirements of §§ 713.02 and 713.03. Canvassers who engage in the same activity but do not ask for funds are exempt from the licensing requirements. Ordinance at § 713.02(d)(6). Thus, in order to answer whether the licensing requirement applies to canvassers, officials for Canal Winchester must determine whether the canvassers are engaging in “disapproved” speech involving requests for funds.

27. Section 713.02 unconstitutionally imposes a content-based licensing requirement on solicitors and peddlers. Under this section, most canvassers are required to obtain an annual license if they desire to combine canvassing activities with any request for funds. However, the ordinance exempts from all licensing and registration requirements the “peddling or soliciting” of “newspapers having their principal sale or distribution” in Franklin County, Fairfield County, or Canal Winchester. Ordinance at § 713.02(d)(1). Thus, in order to ascertain whether the licensing requirement applies, officials for Canal Winchester must determine whether the solicitors or peddlers are engaging in “approved” speech involving the sale of local newspapers, or “disapproved” fundraising for any other cause.

28. Sections 713.02 and 713.03 operate in concert to impose an unconstitutional prior restraint on protected expression insofar as they require any canvasser who seeks to disseminate a message combined with a lawful request for financial support first to seek and obtain a license from the government of Canal Winchester, provide detailed personal information, and pay a fee at least 48 hours prior to speaking. The ordinance also fails to provide prompt judicial review or other basic procedural safeguards necessary to sustain even a narrowly-crafted licensing scheme.

29. Section 713.03 unconstitutionally burdens expression by banning anonymous speech and by imposing onerous prerequisites on anyone, such as representatives of Citizen Action, who seeks to disseminate a message in concert with a lawful request for financial support. Under § 713.03, anyone classified as a “solicitor” must disclose detailed personal information and thus is prohibited from engaging in anonymous speech. Those subject to the ordinance must disclose: a. their name; b. their physical description; c. their social security number; d. the name and address of their employer and dates of employ; d. their home address and previous employment history; e. the names of other municipalities in which they have canvassed; f. proof of their organization’s tax exempt status; g. a recent photograph not less than one year old; and h. “a completed background check completed by any law enforcement authority.” Ordinance at § 713.03 (a) & (b). Anyone subject to the ordinance is required to “conspicuously” display a license or registration certificate on their outer clothing. Ordinance at § 713.06. These requirements place a tremendous burden on protected expression.

30. Section 713.03(d) is unconstitutionally vague and thereby chills free speech because it allows a license to be denied by the “Mayor or the Mayor’s designee” if they determine that the applicant “constitutes a clear and present danger to the residents of the municipality.”

31. Section 713.07 imposes an unconstitutional, content-based burden on protected expression insofar as it requires any canvasser who seeks to disseminate a message combined with a lawful request for financial support to canvass only during narrowly proscribed hours. Under § 713.07, no person may “peddle, solicit, or conduct market research door to door, at dwelling houses or businesses at random, on

sidewalks or streets, at public places, at private meeting places or in any other manner or place in the municipality between sunset or 7:30 p.m. whichever is earlier and 9:00 a.m. or on any Sunday or Holiday.” Holidays are defined to include many traditional holidays, as well as ones unique to Canal Winchester such as the “Day after Thanksgiving – Day following the fourth Thursday in November,” and “the day declared for Trick or Treat each year (Beggar’s Night) if different than Halloween.” *Id.* This curfew provision is unconstitutional in numerous respects including the following:

- a. The curfew is content-based insofar as it exempts peddlers or solicitors working for “national charitable corporations licensed to do business in Ohio with recognized periods for campaigns.” § 713.07(b). Thus, approved speakers need not abide by the curfew but speakers like Citizen Action are subject to its prohibitions.
- b. The curfew severely limits the ability of non-approved speakers such as Citizen Action to reach willing listeners during the hours that they would most likely be at home, particularly in the months of November through March when daylight hours are shortest. By restricting speakers from canvassing after “sunset,” § 713.07 prevents Citizen Action from calling on homes as early as 5:07 p.m. during the months of November and December. Moreover, by eliminating canvassing on Sunday, by expanding the definition of Holidays, and by prohibiting speech in “any other manner or place in the municipality” during these severely restricted hours, § 713.07 unconstitutionally burdens protected speech.

32. Section 713.07 imposes an unconstitutional burden on protected expression insofar as it is not a reasonable time, place, or manner restriction on speech, nor does it leave open ample channels for speakers to communicate their message owing to the unreasonable limitations on hours and places that the ordinance places on speakers who are deemed to be “solicitors.”

33. The ordinance is overbroad in that it prohibits a substantial amount of lawful expression at private residences and at public places in Canal Winchester.

COUNT TWO (Declaratory Relief for Equal Protection Violations)

34. The Plaintiff incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

35. Canal Winchester has violated the Plaintiff's rights to Equal Protection of the law under the Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983, by their actions as set forth more fully below.

36. Section 713.02 unconstitutionally discriminates as to who must comply with the onerous licensing requirements of §§ 713.02 & 713.03 based on the exercise of fundamental rights of free speech. The ordinance requires canvassers who ask for funds to comply with the licensing requirements. Canvassers who engage in the same activity but do not ask for funds are exempt from the licensing requirements. Ordinance at § 713.02(d)(6). This distinction is arbitrary and unrelated to furthering any compelling governmental interest.

37. Section 713.02 unconstitutionally discriminates as to who must comply with the onerous licensing requirements of §§ 713.02 & 713.03 based on the exercise of fundamental rights of free speech. The ordinance requires most canvassers who ask for funds to comply with the licensing requirements. However, the ordinance exempts from any licensing or registration requirements the "peddling or soliciting" of "newspapers having their principal sale or distribution" in Franklin County, Fairfield County, or Canal Winchester. This distinction is arbitrary and unrelated to furthering any compelling governmental interest.

38. Section 713.07 unconstitutionally discriminates as to who must comply with its burdensome requirements based on the exercise of fundamental rights of free speech. The ordinance requires most canvassers and solicitors to comply with the

curfew requirements. However, the ordinance exempts peddlers or solicitors working for "national charitable corporations licensed to do business in Ohio with recognized periods for campaigns." § 713.07(b). Such discrimination among charitable organizations is arbitrary and unrelated to any compelling governmental interest.

COUNT THREE (Injunctive Relief)

39. The Plaintiff incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

40. The Plaintiff will be irreparably harmed by Canal Winchester's actions preventing Citizen Action for canvassing in Canal Winchester absent compliance with the licensing and curfew provisions of the ordinance.

41. The Plaintiffs thus seeks preliminary and permanent injunctive relief enjoining the Canal Winchester from enforcing the provisions of the ordinance set forth herein against Citizen Action or its representatives or members.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring that the Defendant's ordinance is unconstitutional in violation of the First and Fourteenth Amendments of the U.S. Constitution;

B. An order granting both a preliminary and permanent injunction to enjoin Canal Winchester from enforcing the provisions of the ordinance against Citizen Action or its representatives or members;

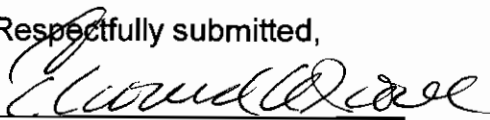
C. An order awarding actual and constitutional damages in favor of Citizen Action to compensate Citizen Action for the deprivation of its rights and revenues

resulting from Canal Winchester's interference with the exercise rights of core political speech and association;


D. An order awarding costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;

E. Any and all additional relief that the Court deems just and necessary.

Respectfully submitted,



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