

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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

and )

ALBERT J. ANDERSON )  
3942 E. 41st St. )  
Newburgh Heights, Ohio 44105 )

Plaintiffs, )

-v- )

VILLAGE OF NEWBURGH HEIGHTS, )  
AN OHIO MUNICIPAL CORPORATION,) )  
4000 Washington Park Blvd. )  
Newburgh Heights, Ohio 44105 )

Defendant. )

CASE NO:

PLAINTIFFS' COMPLAINT  
FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF, AND  
DAMAGES

INTRODUCTION

1. This is an action for declaratory relief, preliminary and permanent injunctive relief and damages against the Village of Newburgh Heights ("Newburgh Heights") which has unconstitutionally prohibited Plaintiff Ohio Citizen Action ("Citizen Action") and Plaintiff Albert J. Anderson ("Mr. Anderson") from displaying political signs protesting Mittal Steel's extensive air pollution in the Cleveland area.

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 citizens' organization engaged in efforts to 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, ask residents to become involved in the campaigns through letter-writing and other activities, and ask for membership dues and contributions to

support Citizen Action's activities. Funds raised by the canvass benefit Citizen Action's activities. Citizen Action has enrolled more than 80,000 members in Ohio.

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

9. Mr. Anderson is a 13 year resident of Newburgh Heights who worked as a truck driver in Cleveland steel mills for approximately 25 years.

10. Newburgh Heights is a village organized under the laws of Ohio, situated in Cuyahoga County.

11. Newburgh Heights 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

12. An authentic copy of Newburgh Heights's Section 1173.10 is attached as Exhibit A.

13. An authentic copy of Newburgh Heights's Section 1173.09 is attached as Exhibit B.

#### FACTUAL ALLEGATIONS

14. One of Citizen Action's major environmental campaigns has been aimed at urging Mittal Steel to reduce its pollution. Mittal Steel is Cleveland's biggest polluter and has more neighbors than any steel mill in the country: 390,000 men, women and children reside within five miles of the facility, and half of Cleveland's public schools are within five miles of the facility.

15. According to the report known as the Title V Emissions Fee Report, which Mittal Steel filed with the Ohio EPA on April 15, 2007, Mittal Steel Cleveland Works

released 44 million pounds of air pollutants (as defined under the federal Clean Air Act) in 2006. These emissions include fine particles and sulfur-dioxide, which are known as triggers for asthma in children and adults, as well as volatile organic chemicals and other pollutants. Citizen Action has published information about Mittal's pollutants and their effects on their website, through the news media, and in a January 2007 report entitled "Smoke and Mirrors: Mittal Steel's Playbook to Cover Up Their Pollution. "

16. As a part of its campaign, Citizen Action assisted Northeast Ohio neighbors in sending approximately 25,000 personal letters and petitions urging Mittal Steel to take immediate action to reduce asthma and cancer linked pollution. In addition, 184 medical professionals have written to Mittal Steel urging them to take action to prevent pollution.

17. Also, as a part of the campaign, neighbors of Mittal Steel have put up approximately 644 yard signs to protest the pollution from the steel mills, and increase citizen pressure to get them to clean up. Citizen Action and individuals in neighborhoods from Slavic Village, Tremont, Old Brooklyn, Ohio City, and Central have raised money for signs and have put them up in Greater Cleveland since the week of March 12, 2007. An authentic copy of the political sign is attached hereto as Exhibit C.

18. On March 10 through March 17, 2007, approximately 15 signs were displayed by Newburgh Heights's residents (including Mr. Anderson) in their yards.

19. Without notice to Citizen Action or Mr. Anderson, Newburgh Heights had its agents and employees take down and/or confiscate all of the signs in Newburgh Heights, the last of which was taken down on or about April 16, 2007.

20. Upon information and belief, the reason the signs were taken down by Newburgh Heights was its support of Mittal Steel. For example, on or about August 14,

2006, Newburgh Heights and Mittal Steel announced they had entered into a memorandum of understanding to work together to develop a former steel waste dump into an industrial park.

21. Newburgh Heights's actions were in retaliation of Citizen Action's and Mr. Anderson's protected conduct.

FIRST CLAIM FOR RELIEF

22. On its face and/or as applied Newburgh Heights's Section 1173.09 violates the First and Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, including, but not limited to the following:

- a. Section 1173.09 is unconstitutional because it "almost completely foreclose[s] a venerable means of communication that is both unique and important." *City of Ladue v. Gilleo*, 512 43, 54 (1994).
- b. Section 1173.09 is not content-neutral because it distinguishes between different types of political speech;
- c. Section 1173.09 is unconstitutional in that it allows excessive, standardless discretion to a public official;
- d. Section 1173.09 imposes an unconstitutional prior restraint upon those persons who display political signs;
- e. Section 1173.09 is not content-neutral because it distinguishes between different types of speech;
- f. Even if Section 1173.09 is content-neutral, it is not a reasonable time, place, and manner restriction because it is not narrowly tailored to serve a significant governmental interest, and/or it does not leave open ample alternative channels for communication; and/or
- g. Section 1173.09 unconstitutionally prohibits the duration of time political signs can be posted.

SECOND CLAIM FOR RELIEF

23. The taking of the signs constitutes an adverse action to Citizen Action and Mr. Anderson, and was done in retaliation of Citizen Action and Mr. Anderson exercising their First Amendment rights.

DEMAND FOR RELIEF

WHEREFORE, Citizen Action and Mr. Anderson pray for the following relief:

A. Granting declaratory judgment finding that it is unconstitutional on its face and/or as applied.

B. Grant preliminary and permanent injunctions enjoining Newburgh Heights from enforcing against Citizen Action, and its canvassers, agents, and employees, Mr. Anderson (and others engaged in political speech), the unconstitutional provisions of Section 1173.09, and from otherwise interfering with Citizen Action's, Mr. Anderson's (and others engaged in political speech) lawful displaying of political signs in Newburgh Heights.

C. Awarding actual and constitutional damages in favor of Citizen Action and Mr. Anderson to compensate them for the deprivation of their rights and revenues resulting from Newburgh Heights's interference with the exercise of rights of political speech.

D. Awarding costs and reasonable attorneys' fees.

E. Granting such other relief as is just and necessary.

Respectfully submitted,

/s/ /Edward A. Icové  
EDWARD A. ICOVE (0019646)  
CAROLE A. HEYWARD (0061750)  
ICOVE LEGAL GROUP, LTD.  
Terminal Tower, Suite 627  
50 Public Square  
Cleveland, OH 44113  
ph: (216) 802-0000  
fax: (216) 802-0002  
[ed@icovelegal.com](mailto:ed@icovelegal.com)

Attorney for Plaintiffs