

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY PAPIERNIK,)
)
 Plaintiff,)
)
 v.)
) Civil Action No.: _____
 EAST NORRITON TOWNSHIP,)
)
 Defendant.)
)

VERIFIED COMPLAINT

AND NOW, comes Barry Papiernik, by his attorneys, and files the following Verified Complaint against Defendant East Norriton Township, Pennsylvania (“East Norriton”), alleging as follows:

PARTIES

1. Plaintiff Barry Papiernik is a resident of East Norriton Township, residing at 3120 North Wales Road, East Norriton, Pennsylvania. He is presently campaigning to be the Republican Party’s nominee for Township Supervisor in this Fall’s general election. The Republican primary election is scheduled to take place on Tuesday, May 19, 2009.

2. Defendant East Norriton Township is a Township of the Second Class organized under the laws of the Commonwealth of Pennsylvania, located in Montgomery County. At all times, all East Norriton officials and employees identified in this Verified Complaint were operating under color of state law.

JURISDICTION & VENUE

3. This action seeks to vindicate rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. § 1983. This Court has jurisdiction over this civil rights action under 28 U.S.C. § 1331 and 28 U.S.C. § 1343 (a) (3) and (4). The Court also has jurisdiction pursuant to 28 U.S.C. § 2201 and § 2202 to declare the parties' rights and to grant all further relief found necessary and proper.

4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b), in that Plaintiff resides in the Eastern District of Pennsylvania, Defendant municipality is located within the Eastern District of Pennsylvania and because the events giving rise to the claim occurred in the Eastern District of Pennsylvania.

FACTUAL ALLEGATIONS

5. Mr. Papiernik is a property owner and business person running for Township Supervisor in East Norriton.

6. As a candidate, Mr. Papiernik had campaign signs produced that would be posted around the Township, encouraging citizens of the Township to vote for him.

7. East Norriton ordinances require candidates for office to obtain a permit before their political signs can be posted anywhere in the Township, including at private residences or on other private property.

8. Ordinance § 205-118, entitled "Temporary Political Signs," reads as follows:

§ 205-118 Temporary political signs.

In addition to temporary political signs permitted under § 205-120A, a nonrenewable permit may also be granted to any candidate or group of candidates sharing sign space whose name(s) will appear on the voting ballot for residents of East Norriton Township to erect any number of election campaign signs not exceeding four square feet. In no event shall more than one campaign sign be permitted on a property or a collection of properties put to one use. Such sign(s) may be erected not earlier than 60 days prior to said election. The signs may not be placed within 10 feet from the edge of the roadway within the Township and shall not obstruct vehicular or pedestrian line of sight or ingress or egress, nor affixed to utility poles, street signs or upon any other structure within the right-of-way of public streets or highways within East Norriton Township. It is the responsibility of the candidate or his representative to obtain permission of the property owner prior to the erection of signs on private property. All signs shall be removed throughout the Township within five days after the election day.

A copy of the ordinance in its entirety can be found at Exhibit A of the Verified Complaint.

9. In addition to requiring a permit before campaign signs can be posted anywhere in the Township, § 205-118 also:
 - a) Limits to one (1) the number of campaign signs that can be posted on any single property or any “collection of properties put to one use”;
 - b) Places a sixty (60) day limit on the amount of time a political sign can appear on any property, including private property, before a given election; and
 - c) States that all signs should be removed from all sites throughout the Township, including signs posted on private property, within five (5) days after any given election day.

10. In addition, under East Norriton ordinance § 205-120, entitled “Temporary Sign Permit,” political candidates are also required to obtain permits before posting signs for, among other purposes, “political events or campaigns.” This ordinance in full reads as follows:

§ 205-120 Temporary sign permit.

A temporary sign permit may be granted to any person or organization in the Township to permit the erection of a temporary sign, other than those discussed in §§ 205-111, 205-112, 205-118 and 205-119.

A.

A thirty-day nonrenewable permit may be issued for public or community events, political events or campaigns, charitable fund-raising events, conventions or any similar notice of general public interest, subject to the following:

(1)

Such signs shall not exceed 16 square feet in area.

(2)

Such signs will be permitted either on or off site.

(3)

Such signs will be limited to four in number.

B.

A seven-day temporary sign permit may be issued for business or commercial signs for advertising, on the premises, such events that are considered to be necessary for the conduct of business beyond the normal day-to-day operations, such as grand openings and going-out-of-business, bankruptcy or fire sales, subject to the following:

(1)

Such signs shall not exceed 16 square feet in area.

(2)

Such signs will be permitted on site only.

(3)

Such signs will be limited to one in number.

(4)

Such signs shall not exceed a height of six feet.

(5)

Advertising devices such as large, inflated balloons, searchlights and banners erected across public streets are prohibited in all zoning districts.

11. Neither sections 205-118 or 205-120, nor any other East Norriton ordinances contain provisions that would guide or otherwise limit the Township's discretion with regard to issuing the permits required under these regulations.

12. Neither the aforementioned ordinances nor any other East Norriton Township ordinance contain provisions that would guide or otherwise limit the discretion of Township officials with regard to removing signs, including campaign or other political signs, from public or private property. Indeed, § 205-113 regulates "incidental signs," a term nowhere defined in the East Norriton ordinance, and expressly gives the zoning officer unfettered discretion to decide which signs may be displayed, *i.e.*, ". . . subject to the approval of the zoning officer."

13. On or about April 13, 2009, Mr. Papiernik applied for and received a permit from the Township to post campaign signs.

14. Plaintiff received a permit on April 14, 2009. He and volunteers for his campaign began to post campaign signs at various locations in East Norriton Township on Friday, April 17, 2009.

15. Plaintiff also made signs available that weekend to supporters of his campaign who wanted to place his campaign signs at their residences or businesses.

16. Plaintiff and his campaign workers made every effort to comply with the Township's restrictions in their placement of campaign signs. With regard to public rights of way in particular, Plaintiff and his volunteers endeavored to place signs only in public spaces where signs from other campaigns had already been placed.

17. On or about April 20, 2009, Plaintiff observed that his campaign signs had been removed from various locations within the Township, while signs for another candidate – namely, signs promoting the candidacy of one of his primary opponents – remained standing.

18. Plaintiff contacted the Township officer in charge of enforcing the zoning provisions governing signs and asked why his campaign signs had been removed. Plaintiff was told that the placements of his signs violated the Township's ordinances.

19. On at least two occasions, Plaintiff wrote e-mails to Bryan Bortnichak, the Township official in charge of enforcing the ordinances regarding campaign signage, complaining about violations by other candidates that did not appear to have been addressed by the Township's enforcement office. Mr. Bortnichak responded that his office was addressing the violations, and that his office enforced the Township's ordinances fairly and impartially.

20. On April 19, 2009, Mr. Papiernik had also asked Mr. Bortnichak whether candidates could pick up their signs for re-use after they had been confiscated. Mr. Bortnichak replied that the Township would "hold the signs for a few days after the election, candidates can pick them up then if they desire. If the signs were not picked up, we dispose of them."

21. Plaintiff has personally observed many of his confiscated signs being held at a location near the Township Building where refuse is stored, along with signs promoting other candidates who were not incumbents. He has only ever seen one incumbent's sign stored at this location.

22. From approximately April 19 to May 4, 2009, Plaintiff and his campaign volunteers continued to place signs in various Township locations, being careful when on public property to place their signs only where other candidates' signs had been placed, only to find that they had been removed and placed at the Township's space for refuse.

23. On the morning of Tuesday, May 5, 2009, Plaintiff discovered that the campaign sign he posted at his own residence had been confiscated by some unknown person. At the time it was confiscated, this sign had been posted in front of Plaintiff's residence for approximately three weeks. He found tire tracks on the lawn in front of his house. Plaintiff believes that the sign was posted ten feet away from the road, in accordance with Township regulations, and that the sign complied with Township ordinances in every other respect.

24. Signs promoting Plaintiff's candidacy that were posted on the lawns of two of his neighbors also were removed on the morning of May 5, 2009. Signs from other candidates posted on lawns in his neighborhood were undisturbed.

25. Later, on the afternoon of May 5, 2009, Plaintiff saw several of his campaign signs in the back of a blue late-model Chevy truck, with the Township's crest on both doors.

26. The result of this course of conduct is that Plaintiff's campaign signs have been systematically removed from private property and from public rights-of-way while allowing the signs of incumbent candidates in those same locations.

COUNT I

Violations of the First and Fourteenth Amendments

27. Paragraphs 1 through 26 of Plaintiff's Verified Complaint are incorporated by reference as if fully set forth herein.

28. East Norriton Ordinance § 205-118 ("Temporary Political Signs") is unconstitutional on its face.

29. The same is true of § 205-120 ("Temporary Sign Permit"), which purports to regulate signs connected to "political events or campaigns."

30. These ordinances violate the First Amendment to the Constitution of the United States of America, as applied to the states by the Fourteenth Amendment to the Constitution, in that:

- a) The aforesaid ordinances are not content-neutral. That is to say, they impose time, place and manner restrictions on political speech by candidates for public office and citizens who support them and do so in a way that is different and more restrictive than that imposed on signs bearing other messages, including some commercial signs;
- b) The ordinances force candidates for Township offices to obtain permits before political signs may be posted anywhere in the Township through a standardless permitting process that chills speech and invites discriminatory application;

- c) The ordinances are overbroad in that they would limit the number of signs any Township resident would post on his or her private property;
- d) The ordinances also are overbroad in that they purport to limit the amount of time any resident or private property owner could post signs on his or her own property before or after a given election;
- e) The ordinance, as interpreted by the Township's enforcement authority, allows the Township to confiscate campaign signs without warning or a hearing, and then to retain the confiscated signs indefinitely and at its sole discretion, thus depriving candidates and citizens of their free speech rights.

WHEREFORE, Mr. Papiernik respectfully requests that this Honorable Court:

- a) declare that the East Norriton Township's sign ordinances violate the First and Fourteenth Amendments to the United States Constitution, both on their face and as applied;
- b) preliminarily, and permanently thereafter, enjoin Defendant East Norriton Township and its employees, officers, agents, assigns and other persons or entities acting in concert with it from enforcing East Norriton's sign ordinances against political signs on public and private property;
- c) award damages for the destruction of Mr. Papiernik's campaign signs;

- d) award Plaintiff's costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- e) award Mr. Papiernik such other and further relief as the Court deems just and appropriate to protect his constitutional rights.

COUNT II

Violation of the Due Process Clause

31. Paragraphs 1 through 30 of the Plaintiff's Verified Complaint are incorporated by reference as if fully set forth herein.

32. East Norriton Township officials have interpreted zoning ordinance § 205-118 and § 205-120 as giving them the authority to confiscate campaign and other signs and to hold these signs for indefinite periods of time, at the Township's sole discretion.

33. No provision in the Township's zoning regulation grants such authority to its code enforcement officers.

34. Citing these ordinances as authority, Township officials have confiscated Mr. Papiernik's campaign signs without prior notice.

35. Plaintiff has seen his signs, along with many signs promoting the candidacies of other non-incumbents, in an area outside the Township building where refuse is kept.

WHEREFORE, Mr. Papiernik respectfully requests that this Honorable Court:

- a) declare that the Township of East Norriton's political sign ordinances violate the Due Process clause as applied;
- b) preliminary, and permanently thereafter, enjoin East Norriton, and its employees, officers, agents, assigns and other person or entity acting in concert with it from enforcing East Norriton's sign ordinances against political signs on public or private property;
- c) award damages for the destruction of Mr. Papiernik's campaign signs;
- d) award Plaintiff's costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- e) award to Mr. Papiernik such other and further relief as the Court deems just and appropriate to protect his constitutional rights.

COUNT III

Discriminatory Enforcement

36. Paragraphs 1 through 35 of this Verified Complaint are incorporated by reference as if fully set forth herein.

37. It is a violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment for a government to use its prosecutorial and/or regulatory authority to promote one speaker's viewpoint over another.

38. The Township has selectively enforced its zoning regulations against the Plaintiff, removing campaign signs for him and other non-incumbents, while leaving the signs of incumbent candidates undisturbed.

39. This discrimination effectively muted plaintiff's speech, while providing an advantage to the two incumbents with whom he is in competition during the primary election.

WHEREFORE, Mr. Papiernik respectfully requests that this Honorable Court:

- a) declare that the Township of East Norriton's discriminatory enforcement of its sign ordinances violates the First and Fourteenth Amendments to the United States Constitution;
- b) preliminarily, and permanently thereafter, enjoin East Norriton and its employees, officers, agents, assigns and other person or entity acting in concert with it from enforcing East Norriton's sign ordinances against political signs on public and private property;
- c) award damages for the destruction of Mr. Papiernik's campaign signs;
- d) award Plaintiff's costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- e) award Mr. Papiernik such other and further relief as the Court deems just and appropriate to protect his constitutional rights.

Respectfully submitted,

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Attorneys for Plaintiff
Barry Papiernik

Dated: May 12, 2009

VERIFICATION

I, Barry Papiernik, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____
