

Albright had used expletives and acted in an unruly manner at the meeting. The Mayor concluded his op-ed piece in a manner indicative of his self-perceived right to arbitrarily restrict and filter public comment at the public meetings of the Blawnox Borough Council: “Public comments at appropriate times are fine, provided they are meant to be constructive, not destructive.”

When Ms. Albright questioned the Council president’s residency during a meeting, he publicly berated her and threatened that she would “pay the consequences” if she brought up the issue again. That tirade was caught on tape by Ms. Brajovic and posted on YouTube, causing the Blawnox Borough Council to immediately adopt new rules intended to deter people from recording its meetings, including a requirement that people sign a log-in sheet in order to record the meeting. Perceiving the sign-in requirement as an infringement of her First Amendment and Pennsylvania Sunshine Act rights, Ms. Brajovic protested the sign-in requirement by signing in as “Thomas Jefferson.” She was then removed from the meeting by a Borough police officer in retaliation for the exercise of her First Amendment and Sunshine Act rights.

Plaintiffs in this civil rights lawsuit allege that the Borough’s restrictions on public participation at its meetings violate the First Amendment and the Pennsylvania Sunshine Act and that defendants have retaliated against them for exercising their rights to comment at and record Borough Council meetings. Plaintiffs seek an injunction prohibiting the Borough from continuing to bar public comment at “agenda” (versus “regular” or “business”) meetings and from requiring persons who wish to record Council meetings to sign a log-in sheet and to sit or stand behind a cardboard barrier in a designated corner of the Council chambers — a room whose audience section is usually mostly *empty*. Plaintiffs also seek damages for violation of their rights and the injuries caused by defendants’ actions.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1367. Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

2. This Court has personal jurisdiction over the defendants who are located in the Western District of Pennsylvania.

3. Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391(b) in that at least one defendant resides here, a substantial part of the events or omissions giving rise to this suit occurred here, and/or any one of the defendants may be found here.

PARTIES

4. Plaintiff Melina Brajovic is a 45-year-old citizen of the United States and a resident of the Borough of Blawnox in Allegheny County in the Commonwealth of Pennsylvania. Ms. Brajovic immigrated to the United States from Yugoslavia in 1985 and became a United States citizen in 1991. She has lived in Blawnox Borough since 2005.

5. Plaintiff Peggy Albright is a 61-year-old citizen of the United States and a lifelong resident of the Borough of Blawnox in Allegheny County in the Commonwealth of Pennsylvania.

6. Defendant Borough of Blawnox is a municipal government entity organized under the laws of Pennsylvania, with its main offices located at 376 Freeport Road, Pittsburgh, PA 15238. The Borough of Blawnox has a legal responsibility to operate according to the laws of the United States and the Commonwealth of Pennsylvania, including, but not limited to, the United States Constitution, the Pennsylvania Constitution, and the Pennsylvania Sunshine Act.

7. Defendant Samuel H. McNaughton, Jr., is, and at all relevant times here mentioned was, president of the Blawnox Borough Council. In his capacity as Council president, Defendant McNaughton has a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant McNaughton is named herein in his individual capacity. Defendant McNaughton is a “person,” as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

8. Defendant Thomas Smith is, and at all relevant times here mentioned was, mayor of the Borough of Blawnox. In his capacity as mayor, Defendant Smith has a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Smith is named herein in his individual capacity. Defendant Smith is a “person,” as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

9. Defendant Patrick Goodman is, and at all relevant times here mentioned was, a police officer employed by the Borough of Blawnox Police Department. In his capacity as a police officer Defendant Goodman has a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Goodman is named herein in his individual capacity. Defendant Goodman is a “person,” as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

BLAWNOX BOROUGH’S BAN ON PUBLIC COMMENT AT AGENDA MEETINGS

Background

10. Blawnox Borough holds two regularly scheduled Council meetings each month: an “agenda” meeting and a regular meeting. Blawnox Borough refers to its business meetings as “regular” meetings and thus the two terms will be used interchangeably in this Complaint.

11. The Council's practice is to deliberate and make decisions, i.e., take official action, affecting the residents and taxpayers of the Borough of Blawnox at both "agenda" and business (or "regular") meetings.

12. Borough agenda meetings are held each month, regularly advertised, and open to the public.

13. The Council makes decisions at agenda meetings regarding items to be acted upon at its business meetings.

14. At business meetings, the Council votes on matters such as bills, ordinances, bond issues, and contracts.

15. The Pennsylvania Sunshine Act requires municipal councils to provide a reasonable opportunity at each advertised regular and special meeting for residents or taxpayers of the municipality to comment on matters of concern, action, or deliberation which are or may be before the council prior to taking official action. 65 Pa. Cons. Stat. § 710.1(a).

16. The Borough permits public comment at its business meetings.

17. The Borough Council's current practice is to forbid members of the public to comment during agenda meetings.

18. The Borough has never adopted a written rule regarding public comment at agenda meetings.

19. The Borough has permitted public comment at Council agenda meetings in the past.

Facts Related to the Arrest of Peggy Albright

20. On October 13, 2008, Ms. Albright attended a Council agenda meeting.

21. Although she regularly attended Council business meetings, she had never before attended an agenda meeting.

22. Ms. Albright attended the October 13 agenda meeting because she was concerned that the Council members were deliberating at the agenda meetings and made up their minds about how they were going to vote prior to the business meetings.

23. Following a report on the Blawnox Fire Department by Council member Scott Krause, who was chair of the Borough's emergency management committee, Ms. Albright attempted to ask a question about an accident at a gas station that involved the Blawnox Fire Department.

24. Before Mr. Krause could answer Ms. Albright's question, Council President McNaughton rapped his gavel, directed Ms. Albright to refrain from speaking, and told her that public comment would not be permitted at the meeting.

25. Borough Mayor Thomas Smith also joined in telling Ms. Albright that she would not be permitted to address the Council at the agenda meeting.

26. Both Council President McNaughton and Mayor Smith became boisterous during the exchange with Ms. Albright.

27. Ms. Albright objected to the actions of Council President McNaughton and Mayor Smith because she believed she had a right to comment under the Sunshine Act.

28. The Pennsylvania Sunshine Act gives the public the right to raise an objection at any time to a perceived violation of the Sunshine Act at any council meeting. 65 Pa. Cons. Stat. § 710.1(c).

29. Rather than permitting Ms. Albright to ask her question or directing her to wait until a designated time during the meeting for addressing the Council, Mayor Smith left the meeting to summon a police officer from another location in the borough building.

30. Blawnox Borough Police Officer Patrick Goodman then arrived and escorted Ms. Albright out of the Council room by her arm and formally placed her under arrest in the Borough police station located downstairs.

31. The time that elapsed between when Ms. Albright started to ask her question and Officer Goodman placed her under arrest was one and a half minutes.

32. At no time did Ms. Albright's conduct disrupt the meeting.

33. After arresting Ms. Albright, Officer Goodman placed her in handcuffs and detained her for about twenty minutes.

34. Officer Goodman also threatened to transport Ms. Albright to the Allegheny County Jail.

35. Officer Goodman charged Ms. Albright with two misdemeanors: disrupting meetings, 18 Pa. Cons. Stat. § 5508, and disorderly conduct, 18 Pa. Cons. Stat. § 5503.

36. Ms. Albright's preliminary hearing on the criminal charges was held on February 19, 2009.

37. The Commonwealth called seven witnesses, including the municipal solicitor, who had not been present at the agenda meeting where Ms. Albright was arrested, and who was permitted to testify over defense counsel's objections.

38. Following the conclusion of the hearing, the magistrate announced that all charges would be held for court.

39. Ms. Albright's counsel filed a Petition for Issuance of a Writ of Habeas Corpus on July 21, 2009, which was granted by the Allegheny Court of Common Pleas on September 9, 2009. The Court ordered that the charges against Ms. Albright be dismissed with prejudice and that the records of her arrest be expunged. (Opinion & Order of Court Granting Petition for Writ of Habeas Corpus) (attached as Exhibit 1).

40. The Commonwealth filed an appeal of that decision with the Superior Court on September 21, 2009.

41. On December 29, 2009, the *Pittsburgh Post-Gazette* published a guest column, entitled "Let the Sunshine In," by Point Park University professor Steve Hallock criticizing the Allegheny County District Attorney for pursuing criminal charges against Ms. Albright and praising the Court of Common Pleas' decision in her case.

42. Mayor Smith submitted a response to Mr. Hallock's column, which was published in the *Pittsburgh Post-Gazette* on January 5, 2010, and falsely suggested that Ms. Albright had used expletives and had acted in an unruly manner when Mr. Smith and Council President McNaughton prevented her from speaking at the October 13, 2008, Council meeting. Tom Smith, *This is not about free speech*, PITTSBURGH POST-GAZETTE, Jan. 5, 2010 (attached as Exhibit 2).

43. Blawnox Borough included a copy of Mayor Smith's *Post-Gazette* response in the envelope with the water bill that was mailed to Blawnox residents in January 2010.

44. The Pennsylvania Superior Court issued an opinion on June 25, 2010, upholding the decision of the Court of Common Pleas and stating that, upon review of the testimony of the Commonwealth's primary witness, Council President McNaughton, during the preliminary hearing, "it strains credulity that this episode resulted in a criminal prosecution and an appeal by

the prosecution to this Court.” *Commonwealth v. Albright*, No. 1620 WDA 2009 (June 25, 2010) (Memorandum Opinion) (attached as Exhibit 3).

45. The Commonwealth then filed an allocator petition with the Pennsylvania Supreme Court, which is pending.

46. Ms. Albright suffered injury as a result of defendants’ actions, including but not limited to, financial injury, physical, emotional, and psychological pain and suffering, and injury to her reputation.

47. Ms. Albright and Ms. Brajovic have attended almost every agenda and business meeting of the Council since the beginning of the year, and they intend to attend agenda and business meetings of the Council in the future.

48. Both Ms. Albright and Ms. Brajovic wish to comment at agenda meetings about matters of concern, action, or deliberation which are or may be before the Council.

49. As a consequence of the Borough’s practice barring public comment at its agenda meetings, plaintiffs have been deprived in the past, and continue to be deprived, of their rights under the First Amendment and the Pennsylvania Sunshine Act to comment on matters of concern, official action or deliberation which are or may be before the Council.

BLAWNEX BOROUGH'S RESTRICTIONS ON PUBLIC'S RIGHT TO RECORD COUNCIL MEETINGS

Background

50. The Borough's first Council meeting of 2010 was an agenda meeting held on January 4, 2010.

51. At that meeting, Ms. Albright objected to Mr. McNaughton's appointment as Council president because he has a home in Florida.

52. Mr. McNaughton responded to Ms. Albright's comments by, among other things, threatening unspecified legal action against her and loudly asserting that he did not want to hear any more questions about his residency from Ms. Albright or she "would pay the consequences."

53. Mr. McNaughton's comments during the meeting were videotaped by Melina Brajovic and posted on YouTube.

54. The Pennsylvania Sunshine Act gives the public the right to use audio and video recording devices to record the proceedings of municipal councils, limited only by those rules and regulations that are necessary for the conduct of the meetings and maintenance of order, yet further providing that such "rules and regulations shall not be made to violate the intent of this chapter." 65 Pa. Cons. Stat. § 710.

55. At the next Council meeting on January 28, Council members unanimously approved new rules restricting the public's right to video and audio record its meetings. Resolution No. 2010-01 (attached as Exhibit 4).

56. Those rules required anyone who wanted to exercise his or her right under the Pennsylvania Sunshine Act to video or audio record Blawnox Council meetings to sign in with

the borough secretary more than a day in advance and to sit or stand at least ten feet from the Council table. The rules required those using cameras, regardless of size or type, to place their cameras in a designated area of the Council chambers.

57. The new rules also barred people from recording their own comments regarding the public deliberations on the same recording as the meeting or from editing the recordings they made of Council meetings.

58. Finally the new rules required anyone who made a recording of a Council meeting to provide a copy of that recording to any Council member upon request.

59. Ms. Brajovic objected to these restrictions on her right to record Council meetings. In particular, she objected to the requirement that she sign a log-in sheet prior to the start of each meeting because she believes that the requirement is unlawful under the First Amendment and the Pennsylvania Sunshine Act.

60. In lieu of signing in before each meeting, Ms. Brajovic sent an e-mail to the Borough office stating her name, address, phone number, and intention to videotape each agenda and business meeting for the remainder of the year. She also provided a copy of the e-mail to the Borough police.

61. After receiving a complaint from Ms. Brajovic regarding the Council's new restrictions on recording meetings, the ACLU of Pennsylvania sent a letter to the Borough explaining that the restrictions violated the Sunshine Act and the First Amendment to the U.S. Constitution and asking the Borough to cease enforcement of the new recording rules. Letter of Feb. 18, 2010, from Sara Rose to Samuel McNaughton (attached as Exhibit 5).

62. In a February 25, 2010, letter to Sara Rose, an attorney for the ACLU of Pennsylvania who is representing the plaintiffs, Blawnox solicitor John Cambest stated that "the

purpose of signing up [to record the meeting] prior to the meeting is so that the Borough Council would be able to accommodate all persons wishing to record the meeting. ... The intent of the regulation was to address the number of potential recording devices *not the identity of those persons wishing to record the meeting.*” Feb. 25, 2010, letter from John Cambest to Sara Rose (emphasis added) (attached as Exhibit 6).

63. The Borough agreed to revise the rules in March, removing the restrictions on editing or commenting on one’s own recordings of Borough meetings and the requirement that copies of one’s recordings be provided to Council members upon request.

64. The Borough revised the sign-in requirement to require anyone wishing to record Council meetings “to sign a log-in sheet on the night of the Council Meeting identifying the type of recording device to be used,” rather than the day before. Borough of Blawnox Resolution 2010-1 Revised (attached as Exhibit 7).

65. The Borough refused to revise its restriction on where people recording the meetings may stand or sit and has relegated those wishing to record Borough Council meetings to a corner of the Council room that is blocked off by cardboard — even when there is no one else in attendance at the meetings.

Facts Related to the Ejection of Melina Brajovic from the June 14, 2010, Agenda Meeting

66. Ms. Brajovic has attended almost every agenda and business meeting of the Council since the beginning of the year and intends to attend agenda and business meetings of the Council in the future.

67. She desires to record the meetings with her camera, but objects to the requirement that she sign the log-in sheet.

68. To express her objection to the sign-in requirement, she began signing in as “Thomas Jefferson.”

69. Ms. Brajovic attended the June 14, 2010, agenda meeting with the intent to record it and signed the log-in sheet as Thomas Jefferson.

70. Before the meeting began, Ms. Brajovic asked the Council if it would allow public comment at the meeting.

71. The Council did not respond to her request.

72. Instead, Council President McNaughton asked Ms. Brajovic if her camera was on and then began arguing with her about whether the sign-in rules were valid.

73. When Ms. Brajovic insisted that Mr. McNaughton, as a public servant, was obliged to comply with the law, Mr. McNaughton stated that he was not her public servant because she “didn’t pay one nickel in taxes. Your name’s not on the deed down there. You’re just a live-in down there. You don’t even pay taxes. So don’t give me that.”

74. Mr. McNaughton then picked up the log-in sheet and ordered Ms. Brajovic to turn her camera off because she did not sign her real name.

75. When Ms. Brajovic refused to obey Mr. McNaughton’s command, he began screaming at her, saying, “You aren’t even born in this country. You can’t even speak English.”

76. He also threatened to have her arrested if she did not turn the camera off.

77. When Ms. Brajovic asked Mr. McNaughton what conditions she had to comply with in order to continue recording the meeting, he told her that it was too late and that she would not be permitted to record the meeting.

78. One of the Council members then called Officer Goodman.

79. When Officer Goodman arrived at the Council chambers, Mr. McNaughton stated that he wanted the officer to charge Ms. Brajovic for disrupting the meeting and that he wanted Ms. Brajovic taken out of the room and her camera turned off.

80. Mr. McNaughton said, "I am being under surveillance against my will. I want it stopped right now."

81. Mr. McNaughton also told Ms. Brajovic that if she did not do what Officer Goodman told her to do, she would go to jail.

82. When Officer Goodman asked what rule Ms. Brajovic had violated, Mr. McNaughton stated that she had violated the provision of the Resolution stating, "Under no condition shall the progress of a Council meeting be impeded or delayed as a result of the recording device, including but not limited to requests of an individual using such device, for purposes of changing a tape, tape operator, having the speakers repeat their statement, or any defective or inoperative equipment."

83. Officer Goodman then requested that Ms. Brajovic turn off her camera and leave the meeting.

84. Ms. Brajovic complied with Officer Goodman's request because she reasonably believed that she would be arrested or cited for disorderly conduct and/or disrupting a meeting if she disobeyed him.

85. At no time did Ms. Brajovic's conduct disrupt or delay the meeting, which had not yet begun at the time that Officer Goodman requested that she leave the meeting.

86. Following the June 14, 2010, meeting, Mr. Cambest sent a letter on behalf of the Borough to Ms. Brajovic and her counsel stating that Ms. Brajovic "has not been complying with Subparagraph (c) of the resolution which requires a person to sign a log-in sheet on the

night of the Council meeting identifying the type of recording device to be used” because Ms. Brajovic “has been using the fictitious name of Thomas Jefferson when signing the log-in sheet.” Letter of June 22, 2010, from John Cambest to Sara Rose (attached as Exhibit 8).

87. The letter threatened that Ms. Brajovic would be banned from using a recording device at the Borough meetings unless she signed her real name to the log-in sheet.

88. Ms. Brajovic, however, continued signing the log-in sheet as Thomas Jefferson to protest the sign-in requirement. When Council members told her she was not allowed to record because of her failure to sign in properly, Ms. Brajovic would turn her video camera over to a friend, who had signed in, to operate during the meeting.

89. Ms. Brajovic regularly posts her recordings of Blawnox Council meetings on YouTube under the name BlawnoxPA.

90. Her purpose in making these recordings of Council meetings available to the public is threefold: making Council meetings accessible to those who are unable to attend in person, informing Blawnox residents about the Council’s actions, and communicating to Council members that their actions are being recorded.

91. Although the Borough video-records Council meetings, it has refused to release those recordings to members of the public, stating that the “meeting videos are for ‘security purposes’ only and are not public documents.” September 9, 2010, Right to Know Request directed to Blawnox Borough (attached as Exhibit 9).

92. On July 27, 2010, Mr. Cambest sent Ms. Brajovic a letter on behalf of the Borough stating that “the Borough is requesting you sign-in on the log sheet provided by the Borough providing the Borough with your full name, printed or otherwise, your full address, printed or otherwise and indicating which type of recording you desire to do. ... The Borough

requires your full name and address in the appropriate boxes and will not accept press names, stage names, initials, or nicknames.” The letter threatened that failure to fill in the log sheet would result in removal of her recording device from the Borough meeting room. Letter of July 27, 2010, from John Cambest to Melina Brajovic (attached as Exhibit 10).

93. Following receipt of that letter, counsel for Ms. Brajovic and Ms. Albright sent a letter to Mr. Cambest requesting that the Borough allow public comment at agenda meetings and repeal the rules requiring people wishing to record Council meetings to provide their names and addresses to the Borough and to remain in a designated corner of the meeting room behind a cardboard barrier. Letter of August 19, 2010, from Sara Rose to John Cambest (attached as Exhibit 11).

94. Because the voices of Council members at Council meetings are not amplified by microphone and amplifier, it is difficult for audience members to *hear* (and thus for the microphone of an audio or video recording device to capture) the voices of all Council members, unless one is sitting in the front center portion of Council chambers before the Council members’ dais.

95. Nevertheless, Council refuses to allow plaintiffs to place a tape recorder on a table that is in the center of the Council chambers immediately on the audience side of the dais, and to video or audio record from anywhere but the designated taping area.

96. Plaintiffs’ use of a video or audio recording device while seated in the front center of the audience section of Council chambers does not obstruct or impair any other audience member’s view of or ability to hear the Council members. The audio and video recording devices plaintiffs wish to use are hand-held. Plaintiffs have not erected and do not intend to erect light stands in Council chambers.

97. Thus, there is no legitimate need of Council to corral in a corner plaintiffs and others wishing to record Council meetings, on the purported basis that the operator and her recording device would interfere with Council meetings or obstruct other audience members' views of Council members.

98. Also, it is difficult to *see* (and thus for one's video camera to capture the image of) all the Council members as they are seated at their semi-circular dais if one is forced to record the meetings from the small Council-designated recording area in the far left hand corner of Council chambers.

99. Plaintiffs believe this is precisely the reason Council has ordered them and others wishing to audio or video record Council meetings to remain in this corner of the room: to make it difficult to capture Council members' voices and images when Council members are speaking.

100. The designated recording area is thus an unreasonable place and manner restriction, and violates Section 710 of the Pennsylvania Sunshine Act, because, due to its location on the far left side of the Council chambers, it unreasonably interferes with the ability to capture visually and aurally the images and voices of *all* Council members as they conduct official Borough business, particularly in light of the fact that there are about 25 audience seats in Council chambers yet routine audience attendance is only between two and four people.

101. Thus, there is no legitimate reason for the location of the Council-designated recording location. The designated recording location unreasonably restricts, impairs, and burdens the ability of the plaintiffs, and thus the public, to capture with audio and video recording devices the official proceedings of the Borough Council.

102. In his response to plaintiffs' counsel's letter (Exhibit 11) objecting to the Borough's requirements that people wishing to record Council meetings sign in and sit in a designated area, the Borough's solicitor stated that the Borough was "not interested in changing the procedures already established." Letter of September 2, 2010, from John Cambest to Sara Rose (attached as Exhibit 12).

103. The Borough's solicitor, Mr. Cambest, further accused Ms. Brajovic of improperly trying to circumvent the sign-in requirement by allowing another individual to operate her recording equipment during the meeting, even though there is no rule barring people who wish to record meetings from borrowing equipment from or loaning equipment to another person for that purpose.

104. Ms. Brajovic has suffered in the past and will continue to suffer in the future injuries and damages as a result of defendants' actions, including but not limited to financial injury, emotional and psychological pain and suffering, and injury to her reputation.

105. As a consequence of defendants' policy and actions thereunder, Ms. Brajovic has been deprived of her rights under the First Amendment and the Pennsylvania Sunshine Act to record Blawnox Council meetings, and Ms. Albright has been deprived of her right under the First Amendment to view Ms. Brajovic's recordings of Council meetings, and plaintiffs will suffer these deprivations in the future as long as defendants' above-described policies and actions are allowed to stand.

CLAIMS

FIRST CAUSE OF ACTION (FIRST AMENDMENT RIGHT TO COMMENT)

106. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

107. The Pennsylvania Sunshine Act, by giving Blawnox residents and taxpayers a right to comment at public meetings, creates a limited public forum for those wishing to comment on matters of concern, action, or deliberation which are or may be before the Council.

108. The Borough's failure to allow public comment at its agenda meetings violates the First Amendment because it is not a reasonable time, place, or manner restriction as it does not leave open any alternative channels of communication.

SECOND CAUSE OF ACTION (FIRST AMENDMENT RIGHT TO RECORD)

109. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

110. Observing and recording Blawnox Borough Council meetings is a legitimate means of gathering information for public dissemination and is therefore expressive conduct protected by the First Amendment to the United States Constitution.

111. The Pennsylvania Sunshine Act, by giving the public the right to audio or video record Council meetings, creates a limited public forum for those wishing to record Blawnox Borough Council meetings.

112. The Borough's requirements that people wishing to record Council meetings sign a log-in sheet with their legal name and address prior to the start of the meeting and stand in a

designated corner of the Council chambers violate the First Amendment because they are not reasonable time, place, or manner restrictions.

113. The Borough's requirement that people wishing to record Council meetings disclose their legal name and address prior to the start of the meeting also violates the First Amendment right to engage in anonymous speech.

**THIRD CAUSE OF ACTION
(FIRST AMENDMENT RETALIATION)**

114. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

115. Defendants' actions in improperly removing Plaintiff Albright from a Council meeting, illegally detaining her in handcuffs, and illegally citing her for disorderly conduct and disrupting a meeting, were taken in retaliation for Ms. Albright's legitimate exercise of her rights under the First Amendment and the Pennsylvania Sunshine Act to object to a perceived violation of the Sunshine Act, in violation of her First Amendment free-speech rights.

116. The inclusion by Blawnox Borough of Mayor Smith's column disparaging Plaintiff Albright in Blawnox residents' water bills constituted retaliation against Ms. Albright for her legitimate exercise of her rights under the First Amendment and the Pennsylvania Sunshine Act to object to a perceived violation of the Sunshine Act, in violation of her First Amendment free-speech rights.

117. The actions of Defendants Borough of Blawnox, Council President McNaughton, and Officer Goodman in removing Plaintiff Brajovic from a Council meeting under threat of arrest were taken in retaliation for Ms. Brajovic's legitimate exercise of her rights under the

First Amendment to protest the Council's rules for recording its meetings, in violation of her First Amendment free-speech rights.

**FOURTH CAUSE OF ACTION
(FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE
SEIZURES)**

118. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

119. Defendant Goodman's removal of Plaintiff Albright and subsequent detention and arrest of her without probable cause violated her Fourth Amendment right to be free from unreasonable seizures.

**FIFTH CAUSE OF ACTION
(RIGHT TO PUBLIC COMMENT UNDER PENNSYLVANIA SUNSHINE ACT)**

120. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

121. The Borough's failure to allow public comment at its agenda meetings violates the Pennsylvania Sunshine Act's (65 Pa. Cons. Stat. § 710.1(a)) requirement that municipal councils provide a reasonable opportunity at each advertised regular and special meeting for residents or taxpayers of the municipality to comment on matters of concern, action, or deliberation which are or may be before the council prior to taking official action.

**SIXTH CAUSE OF ACTION
(RIGHT TO RECORD PUBLIC MEETINGS UNDER PENNSYLVANIA
SUNSHINE ACT)**

122. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

123. The Borough's requirements that people wishing to record Council meetings sign a log-in sheet with their legal name and address prior to the start of the meeting and stand in a designated corner of the Council chambers violate the Pennsylvania Sunshine Act's (65 Pa. Cons. Stat. § 710) requirement that members of the public be permitted to use audio and video recording devices to record public meetings because those requirements are not necessary for the conduct of the meetings or maintenance of order and violate the intent of the Sunshine Act.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, plaintiffs respectfully request the following:

- (a) A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that defendants have violated plaintiffs' rights under the First Amendment to the U.S. Constitution and the Pennsylvania Sunshine Act;
- (b) An injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting defendants from enforcing their policy barring public comment at Blawnox Council agenda meetings;
- (c) An injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting defendants from enforcing their policy requiring people to sign their names to record Blawnox Council meetings and to stand in a designated area of the room while recording the meetings;

- (d) An award for compensatory damages against all defendants, jointly and severally, and an award for punitive damages against Defendants Smith, McNaughton and Goodman, in an amount to be determined at trial, for all injuries and damages plaintiffs have sustained in the past and that they may sustain in the future;
- (e) Plaintiffs' costs incurred in this litigation including attorney's fees pursuant to 42 U.S.C. § 1988 and the Pennsylvania Sunshine Act; and
- (f) Such other and further relief, special and general, legal and equitable, as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury on all issues so triable.

Date: October 12, 2010

Respectfully submitted,

/s/ Sara J. Rose

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