

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KENNETH and VIRGINIA FROCK,

Plaintiffs,

v.

BOROUGH OF LITTLESTOWN,

Defendant.

Case No. \_\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiffs Kenneth and Virginia Frock (“the Frocks”) file the following complaint against Defendant Borough of Littlestown (“the Borough”), and in support thereof, aver as follows:

**SUMMARY OF ACTION**

1. The Frocks, residents and property owners in the Borough of Littlestown, were and are being prevented from displaying political signs on their property pursuant to portions of the Borough’s Zoning Ordinance (“the

Ordinance”). The Ordinance restricts signs on the basis of content and absolutely prohibits large political lawn signs in residential districts, while permitting other types of large lawn signs in these same districts. The only display of political signs permitted by the Ordinance is the display of small (less than six (6) square feet) political signs thirty (30) days prior to an election and three (3) working days after an election. The Frocks bring this action to obtain declaratory and injunctive relief to prevent the Borough from enforcing provisions of the Ordinance that violate the First and Fourteenth Amendments to the United States Constitution.

### **PARTIES**

2. Plaintiffs Kenneth and Virginia Frock reside in Littlestown Borough, and own property at 325 West King Street, Littlestown, Pennsylvania 17340.

3. Defendant Borough of Littlestown is a municipality organized under Pennsylvania law and located in Adams County, Pennsylvania. At all relevant times, Borough officials and employees identified in this complaint were operating under color of state law.

### **JURISDICTION AND VENUE**

4. 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 (3) and (4). This 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.

5. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b), in that Plaintiffs reside in the Middle District of Pennsylvania, Defendant is a municipality located within the Middle District of Pennsylvania, and the claims arose in the Middle District of Pennsylvania.

### **FACTUAL BACKGROUND**

6. On or about June 11, 2007, the Frocks erected a political sign on the front lawn of their home in Littlestown Borough, criticizing the Borough's handling of their disputed water bill. The sign read: "We refuse to yield to 'Gestapo' tactics of Littlestown Borough" and measured approximately 9 feet 10 inches by 1 foot 10 inches.

7. On June 18, 2007, Assistant Code Officer, Erik Teichmann, sent a notice of violation to the Frocks, demanding that they remove the sign within fifteen (15) days of receipt of the notice and threatening to issue a citation for each day that the sign remained up after that expiration of time. A copy of this notice is attached and marked as Exhibit "A."

8. In the notice, Mr. Teichmann asserted that the Frocks' sign violated the Ordinance because: 1) The Frocks did not have a permit for the sign;

2) The Frocks could not obtain a permit because their sign was explicitly prohibited under the Ordinance; and 3) The Frocks could not obtain a permit because their sign did not qualify as one of the types of signs permitted by the Ordinance.

9. Included with the notice was a copy of Section 701 of the Ordinance. Section 701 regulates signs. A copy of Section 701 (“Sign Regulations”), portions of Article 100 (“General Provisions”) and portions of Article 900 (“Administrative Procedures”) of the Ordinance and the Borough’s Miscellaneous Fees Addendum are attached and marked as Exhibit “B.”<sup>1</sup>

10. Section 701.2(B)(7) permits only political signs that measure six (6) square feet or less and are displayed no “earlier than thirty 30 days prior to an election” and no later than “three (3) working days after the said election.” Thus, the Ordinance bans political speech for roughly ten (10) months out of the year.

11. While prohibiting political signs for ten (10) months out of the year, Sections 701.2(B), (I) and (J) allow numerous other signs, including the

---

<sup>1</sup> Article 100 sets forth definitions used in Section 701. “Political sign” is not defined. Article 900 provides the enforcement scheme for Section 701. Specifically, Section 901.8 sets forth the penalties for violating the Ordinance, and Section 902.7 sets forth the sign permit application process. The Borough’s Miscellaneous Fees Addendum is included because it sets forth the application fee for sign permits.

following: 1) thirty-two (32) square foot signs of developers displayed for an unlimited time period; 2) signs of any size advertising a special event, so long as these signs are displayed not more than fourteen (14) days before the event; 3) thirty-two (32) square foot “institutional signs” advertising institutions like churches and schools; and 4) fifty (50) square foot “community welcome signs” displayed for an unlimited time period. Ordinance §§ 701.2(B), (I), (J). Thus, the Ordinance makes a content-based distinction between political signs and other types of signs, which are not subject to such restrictive temporal or size limitations.

12. The Ordinance also creates an improper content-based prior restraint on signs. Ordinance § 701.2(B). Section 701.2(B) exempts from the permit requirement certain types of signs based on content. For example, the Ordinance allows for display of political signs greater than 6 square feet only upon the granting of a permit, but only in commercial, town center and industrial districts (Ordinance §§ 701.2(B)(7), 701.5, 701.6, 701.7). Such large political signs are completely banned in residential districts. Ordinance §§ 701.2(B), 701.4. On the other hand, the Ordinance allows for display of 32-square-foot developers’ signs without a permit in any zoning district (Ordinance § 701.2(B)(5)).

13. Residents wishing to post signs not exempt from the permit requirement must provide the Borough with “a scale drawing specifying dimensions, materials, illumination, letter sizes, colors, location on land or

buildings, and all other relevant information.” Ordinance §§ 701.2(A)(1), 902.7. It also requires the applicant to pay a \$20 permit fee, disclose personal identifying information and subject the premises to inspection by the Borough Zoning Officer. Ordinance §§ 701.2(A)(2) – (5); Miscellaneous Fees Addendum.

14. A single violation of the Ordinance is punishable by a fine of up to five hundred dollars (\$500), and each notice of violation thereafter is punishable by a separate fine of up to five hundred dollars (\$500). Failure to pay such fines is punishable by up to sixty (60) days in jail. Ordinance § 901.8.

15. Because they feared prosecution, the Frocks removed their sign on or about July 30, 2007.

16. For the same reason, the Frocks have refrained from displaying another political sign, although they wish to do so.

17. The Frocks have suffered irreparable harm because they have been deprived of their First Amendment right to engage in political speech on their own property.

18. Because the Ordinance prevents them from displaying a new sign, the Frocks will continue to suffer irreparable harm, for which there is no adequate remedy at law, unless this Court grants the requested injunctive relief.

### **CLAIMS**

19. The Borough of Littlestown's sign ordinance is unconstitutional on its face and as applied.

20. The Ordinance violates the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution, in several ways.

21. The Ordinance bans outright all signs bearing political messages on private residential property for approximately ten months during the year.

22. Furthermore, the Ordinance contains content-based restrictions on speech. Content-based regulations of signs on private property are presumptively unconstitutional. In particular, giving commercial signs preference over political and noncommercial signs violates the First Amendment.

23. The Ordinance also includes unconstitutional prior restraints on speech. Requiring permits, for all but a few classes of signs, constitutes a burdensome prior restraint, which also violates the First Amendment.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Kenneth and Virginia Frock respectfully request that this Honorable Court (i) declare that the Borough of Littlestown's Ordinance regulating signs, Section 701, violates the First and Fourteenth Amendments to the United States Constitution, both facially and as applied; (ii)

preliminarily, and permanently thereafter, enjoin the Borough and its employees, agents, and assigns from enforcing Sections 701 and 902.7 of the Ordinance; (iii) award nominal damages to the Frocks for the violation of their rights; (iv) award Plaintiffs' costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and (v) grant such other relief as this Court may deem just and appropriate.

Dated: March 11, 2008

Respectfully submitted,

/s/ Mary Catherine Roper  
Mary Catherine Roper (PA 71107)  
AMERICAN CIVIL LIBERTIES  
FOUNDATION OF PENNSYLVANIA  
P.O. Box 40008  
Philadelphia, PA 19106  
(215) 592-1513 x116 (Telephone)  
(215) 592-1343 (Fax)  
mroper@aclupa.org

/s/ Valerie A. Burch  
Valerie A. Burch (PA 92873)  
AMERICAN CIVIL LIBERTIES  
FOUNDATION OF PENNSYLVANIA  
105 N. Front Street, Suite 225  
Harrisburg, PA 17101  
(717) 236-6827 x12 (Telephone)  
(717) 236-6895 (Fax)  
vburch@aclupa.org

/s/ Witold J. Walczak  
Witold J. Walczak (PA 62976)  
AMERICAN CIVIL LIBERTIES  
FOUNDATION OF PENNSYLVANIA  
313 Atwood Street  
Pittsburgh, PA 15213



(412) 681-7864 (Telephone)  
(412) 681-8707 (Fax)  
vwalczak@aclupa.org  
ATTORNEYS FOR PLAINTIFFS

**VERIFICATION**

We, Kenneth and Virginia Frock, declare under penalty of perjury that to the best of my understanding, knowledge and belief the foregoing is true and correct.

Executed on March 8, 2008

*Kenneth T. Frock*

\_\_\_\_\_  
Kenneth Frock

*Virginia J. Frock*

\_\_\_\_\_  
Virginia Frock