

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CITIZENS ACTION COALITION OF
INDIANA, INC.,

Plaintiff.

v.

No. 1:13-cv-422

TOWN OF YORKTOWN, INDIANA.

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. Citizens Action Coalition of Indiana, Inc. (“CAC”), is a grass-roots non-profit organization dedicated to issues such as utility rate-making and regulations, health care, environmental well-being, and political participation. In order to support and advance these issues, CAC engages in canvassing activities, whereby employees will go door-to-door in residential neighborhoods in order to discuss these issues with persons, to gain new members for CAC, and to solicit contributions. In the past, CAC has engaged in this activity in the Town of Yorktown, Indiana (“the Town”), and it wishes to do so again in the near future. However, in 2012, the Town passed an ordinance—Ordinance No. 688 (“the Ordinance”)—that requires that CAC and its canvassers apply for and obtain a license prior to engage in this canvassing activity, that mandates the payment of substantial fees associated with this licensure, and that regulates the activity of CAC and its canvassers in a variety of other manners. Numerous provisions of the Ordinance are

violative of the First Amendment to the United States Constitution, and appropriate injunctive and declaratory relief is warranted.

Jurisdiction, Venue, and Cause of Action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. Citizens Action Coalition of Indiana, Inc., is a non-profit corporation with its primary offices in Marion County, Indiana.
7. The Town of Yorktown, Indiana, is a municipality located in Delaware County, Indiana.

Ordinance No. 688

8. On or about February 27, 2012, the Yorktown Town Council—the legislative body for the Town of Yorktown, Indiana—passed Ordinance No. 688, which amends and replaces the pre-existing Chapter 110 (titled “Peddlers, Solicitors, and Transient Merchants”) of its Code of Ordinances. A true and correct copy of Ordinance No. 688 (“the Ordinance”) is attached and incorporated herein.
9. Section 110.02 of the Ordinance provides, in pertinent part, as follows:

No person shall be engaged as a peddler, professional fundraiser, solicitor or transient merchant within the town limits without first obtaining a license pursuant to this chapter. A license is not required of a non-commercial door-to-door advocate

However, a veteran of the armed services (as defined by Indiana Code § 25-25-2-1) does not need to obtain a license in order to engage in otherwise proscribed activity. (Section 110.03).

10. A “non-commercial door-to-door advocate” is defined as “[a] person who goes door-to-door for the purpose of disseminating religious, political, social or other ideological beliefs” and “includes any person who canvasses or distributes pamphlets or other written information intended for non-commercial purposes.” (Section 110.01).
11. A “professional fundraiser” is defined as “[a]ny person, including a corporation or other entity, who performs any solicitations for money, pledges of money or other funds or valuables,” and “[a] non-commercial door-to-door advocate who also solicits for money, funds or valuables is considered a professional fundraiser.” (Section 110.01).
12. The terms “peddler” and “solicitor” are also defined by the Ordinance, although these definitions exclude from their ambit persons who “have a principal office or sales office within Mt. Pleasant Township [which includes the Town of Yorktown], or within twenty-five (25) miles from the center of the Township.” (Section 110.01).
13. An application for a license required by Section 110.02 must be made in writing, and must include, *inter alia*, an applicant’s full name and address, the address of her local business establishment and the exact nature of his or her business. An applicant must also pay a non-refundable application fee of \$150.00. (Section 110.04).
14. Additionally, a person who has obtained a license must pay a license fee of \$50.00 per week, per person. (Section 110.04(B)(7)).
15. Once an individual applies for a license, the town marshal is required to “conduct an investigation concerning the trust [*sic*] of the facts stated in the application, the character

of the applicant and the condition of the premises upon which the proposed licensed activity is to take place.” (Section 110.05).

16. Any application for a license then must be approved unless the Clerk-Treasurer of the town finds that (a) the applicant has been convicted of a crime that is “substantially related to the qualifications, functions, or duties of the business, profession or occupation for which the license is to be issued”; (b) the applicant has committed “any act involving dishonesty, fraud or deceit with intent to substantially benefit himself, herself, or another or substantially injure another”; (c) the applicant knowingly made a false statement of fact required to be revealed in the application; or (d) the issuance of the license “would be inconsistent with public health, safety or general welfare.” (Section 110.06).
17. A person who must be licensed under the Ordinance who is “engaged in fundraising” must, at the outset, “disclose to the prospective buyer his or her name and the company or product he or she represents” and must immediately leave the premises if requested to do so. (Section 110.07).
18. It is unlawful for any person “to peddle, solicit, or fundraise before the hour of 9:00 a.m. of any day or after the hour of 8:00 p.m. (or dusk, whichever is earlier) of any day without the specific prior consent of the prospective buyer.” (Section 110.09).

Factual Allegations

19. Citizens Action Coalition of Indiana, Inc. (“CAC”), is an Indiana not-for-profit organization dedicated to promoting and preserving the rights of Indiana citizens in relations to issues such as utility rate-making and regulations, health care, environmental well-being, and political participation.

20. As a part of its operations, CAC regularly and routinely engages in canvassing residential neighborhoods in Indiana's cities and towns, including the Town of Yorktown, Indiana ("the Town"). Canvassers, who are employed and compensated by CAC, use these canvassing opportunities to talk to citizens about issues of public and political importance, to obtain new members, and to solicit contributions.
21. When engaging in this canvassing activity, CAC's canvassers will spend the majority of their interaction with residents speaking to persons about issues of public concern and of concern to CAC, and will distribute informational literature to the residents concerning these issues. The canvassers will then ask the residents if they would like to sign a petition concerning one or more of the issues about which they are canvassing and, at the end of their interaction, may ask individuals if they would like to make a contribution to CAC. Donations from these interactions are vital to CAC's ability to continue its operations.
22. When CAC decides to send canvassers to a particular city or town in Indiana, it typically notifies the local police department or other governmental official that it will be doing so, and provides the local officials with a list of its canvassers as well as their names, their dates of birth, and the last four digits of their social security numbers. CAC will also provide local officials with the license plate numbers of the vehicles its canvassers will use, and with a letter that generally describes CAC's activities and its canvassing procedures. This information is provided as a courtesy and not because CAC believes it is under an obligation to do so.
23. When canvassing, CAC's canvassers will go door-to-door between the hours of 4:00 p.m. and 9:00 p.m. CAC has found, after years of engaging in canvassing, that it is essential

to canvass between 7:00 p.m. and 9:00 p.m., for during this time most persons are home and, having finished dinner, are often willing to listen to the canvassers and to make contributions. (If canvassing occurs in the late afternoon, many persons are not yet home; and if it occurs before 7:00 p.m. many persons are eating dinner and therefore not willing to speak with canvassers.)

24. CAC and its canvassers typically visit each city or town in which they are canvassing, including the Town, about once a year. While they are canvassing in a city or town, they are likely to canvass in that city or town once or twice a week for several months until they have finished canvassing the neighborhoods that they intend to canvass.
25. When CAC canvasses in a city or town, it is likely to send anywhere from five (5) to thirty (30) canvassers to that city or town, depending on the size of CAC's canvassing staff at the time.
26. CAC and its canvassers have engaged in canvassing activities in the Town for several years. In the past few years, CAC was asked to have its canvassers personally check in with the Town's police department each afternoon before engaging in canvassing activity. While CAC and its canvassers did this as a courtesy, they object to having to do so as it is not required in any other city or town in Indiana and it takes valuable time away from actual canvassing activity and it calls additional attention to CAC and its canvassers. Subsequently, approximately eighteen (18) months ago, an employee of CAC checked in with the Town's police department before engaging in canvassing activity and was informed that CAC and its canvassers would not be permitted to engage in this activity. On this occasion, the Town ultimately relented.

27. On February 20, 2013, CAC sent a letter to government officials in the Town (via facsimile) indicating that it intended to canvass within the Town once again and providing the above-described information, which included a list of ten (10) canvassers that were to engage in canvassing activity in the Town.
28. In response to its letter, CAC received a handwritten facsimile on the following date, which read as follows:

Please note effective 2/27/12 changes to Ordinance No. 688 including –

150⁰⁰ – initial license application fee

50⁰⁰ – per person - per week

Permit good for 1 week only (same fees apply for renewal)

Hours for permit 9:00 am – 8:00 pm or dusk, whichever is earlier

A true and correct copy of this facsimile, to which a copy of the Ordinance was attached, is attached and incorporated herein. Follow-up correspondence between CAC and the Town's attorney confirmed that the Town "believe[s] that the ordinance is fair and reasonable, and is tailored to protect CAC's rights of free speech."

29. CAC and its canvassers have not intentionally been to the Town to engage in canvassing activity after learning of the Ordinance, due exclusively to the presence of the Ordinance. However, during a recent trip to canvass in the contiguous municipality of Muncie, Indiana, one of CAC's canvassers inadvertently canvassed door-to-door at a few houses in the Town. Police officers employed by the Town promptly appeared and the canvasser was instructed to cease canvassing in the Town.
30. CAC objects to having to obtain a license prior to engaging in its canvassing activities. It also objects to having to pay either to apply for a license or to engage in its canvassing

activities. If CAC were to have ten (10) canvassers in the Town for a single week (or any portion thereof), as it was planning to do in the Town, it would be required to pay \$2,000.00 in application and licensing fees. As a non-profit organization, this would be cost-prohibitive for CAC.

31. Moreover, although CAC is not clear on what precisely is intended by the Town's use of the word "dusk" in its Ordinance (and in its facsimile), depending on the time of year sunset may occur as early as 5:20 p.m or 5:30 p.m., and for the vast majority of the year it will occur before 9:00 p.m. The time restrictions in the Ordinance will therefore significant limit CAC's ability to reach its intended audience.
32. As a result of the actions or inactions of the Town, CAC is suffering irreparable harm for which there is no adequate remedy at law.
33. The Town has, at all times, acted or refused to act under color of state law.

Legal Claims

34. The Ordinance violates the First Amendment to the United States Constitution. The manners in which the Ordinance violates the First Amendment include, *inter alia*, the following:
 - a. The requirement that CAC and/or its canvassers apply for and obtain a license prior to engaging in expressive activity violates the First Amendment.
 - b. Even if a license may generally be required before CAC and/or its canvassers engage in expressive activity, the Ordinance is unconstitutional in, *inter alia*, the following respects:
 - i. The requirement that CAC and/or its canvassers pay an application fee and a licensing fee prior to engaging in expressive activity violates the First Amendment.
 - ii. The requirement that CAC and its canvassers disclose on a license application the identities of its canvassers and the nature of their business violates the First Amendment.

- iii. The lack of ascertainable standards for approving and/or the Town's discretion in evaluating a license application and/or revoking (or suspending) a license violates the First Amendment.
 - iv. To the extent that the Ordinance permits a license application to be denied based on the prior bad acts of a canvasser, the Ordinance violates the First Amendment.
 - v. The time period for a decision on a license application violates the First Amendment.
 - c. The time limitations imposed on the expressive activity of CAC and its canvassers violate the First Amendment.
 - d. The requirement that CAC's canvassers, at the outset of its interactions with persons, disclose their name and company violates the First Amendment.
35. To the extent that the Ordinance relies on the term "dusk," that term is void for vagueness and the Ordinance therefore violates the Fourteenth Amendment to the United States Constitution.

Request for Relief

WHEREFORE, the plaintiff respectfully that this Court do the following:

- 1. Accept jurisdiction of this cause and set it for hearing.
- 2. Declare that the defendant has violated the rights of the plaintiff and its canvassers for the reasons stated above.
- 3. Issue a preliminary injunction, later to be made permanent, enjoining the enforcement of Ordinance No. 688.
- 4. Award the plaintiff its costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
- 5. Award all other proper relief.

/s/ Gavin M. Rose

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