

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MICHAEL EASLEY, and EMILY)	
GALLOWAY,)	
)	
Plaintiffs,)	
)	
v.)	No. 3:23-cv-00563
)	
TOWN OF KINGSFORD HEIGHTS,)	
INDIANA, and the TOWN COUNCIL OF)	
KINGSFORD HEIGHTS, INDIANA,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introductory Statement

1. The Town of Kingsford Heights, Indiana (“the Town”) is a small municipality in northwest Indiana formally governed by an elected Town Council. Like many governmental bodies and officials, the Town Council maintains and operates a page through Facebook.com, through which it posts information about its activities and other matters of relevance to the community and on which it allows “comments” from other Facebook users. However, unlike the overwhelming majority of governmental bodies and officials who maintain Facebook pages, the Town Council maintains its Facebook page as a “private group.” This means that, in order to view any content on the page or to comment on this content, an individual not only must have a Facebook account but must request and receive permission to “join” the group from the Town Council. This alone impinges on the First Amendment rights of persons who, for whatever reason, are not “members” of the group.

2. On top of this, however, the Town Council refuses access to this group to persons, even

residents of the Town, based on the content or viewpoint of their own expressive activity. For instance, Michael Easley was removed from the group by the Town Council after he posted a Facebook comment, in a different forum altogether, that was critical of the leadership of the Town Council. And Emily Galloway was removed from the group by the Town Council after she asked a simple question—also in a different forum on Facebook—pertaining to a campaign-related statement that one of the members of the Town Council had recently made.

3. The plaintiffs are entitled to injunctive and corresponding declaratory relief to safeguard the exercise of their constitutional rights.

Jurisdiction, Venue, and Cause of Action

4. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

7. 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

8. Michael Easley is an adult resident of LaPorte County, Indiana.

9. Emily Galloway is an adult resident of LaPorte County, Indiana.

10. The Town of Kingsford Heights, Indiana is a small municipality located in LaPorte County, Indiana.

11. The Town Council of Kingsford Heights, Indiana is the elected body that governs the Town of Kingsford Heights, Indiana.

Factual Allegations

12. Kingsford Heights (“the Town”) is a small town located in LaPorte County, Indiana. As of the 2020 census, it had 1,335 residents.

13. The Town is governed by a five-member Town Council, which exercises legislative authority for the Town. Due to the Town’s size, it does not have a mayor, town manager, or other official that exercises executive authority over the Town.

14. While the Town maintains a website—www.townofkingsfordheights.com—this website contains no information about the Town Council or its activities other than basic contact information.

15. Rather, the Town Council maintains a private Facebook “group” through which it shares information about its activities and other matters of relevance to the community. This Facebook “group,” called “Town Council News,” may be accessed through <https://www.facebook.com/groups/227312991718689>.

16. Through this Facebook group, the Town Council shares copies of proposed ordinances that it is considering, publishes information concerning Town Council meetings, and provides other information concerning Town events or issues that affect the Town.

17. When information is shared to this group by the Town Council, Facebook users who are “members” of the group have the opportunity to use Facebook’s “comment” function to express their opinions or otherwise remark on the information shared by the Town Council (or on comments made by other members of the group). Many Facebook users who are members of the group do so.

18. The “private” nature of this Facebook group, however, means that only persons who are members of the group may access information shared by the Town Council or may comment on the information shared by the Town Council’s or on other persons’ comments in the group.

19. In order to become a member of the Facebook group, not only must an individual have a Facebook account but they must also request and receive permission to become a member from the members of the Town Council who administer the Facebook group.

20. Although the Town Council purports to allow any resident of the Town to become a member of its private Facebook group, in actuality even residents of the Town may be denied membership in the group or, even if initially granted membership, may subsequently be removed from the group by the Town Council.

21. Indeed, as of June 7, 2023, only 232 persons were members of the Town Council's private Facebook group.

22. Michael Easley is an adult resident of the Town and is a Facebook user. He has resided in the Town for approximately sixteen years.

23. Mr. Easley was previously allowed to become a member of the Town Council's private Facebook group, and he remained a member for several years.

24. However, in March or April of 2023, the President of the Town Council made an oral remark during a public meeting of the Town Council wherein he indicated that he would do what he needed to do for the Town and that he was the "roadblock" preventing the passage of certain legislation. In response, Mr. Easley made a comment on Facebook in the Town Council's private Facebook group in which he criticized the President of the Town Council but did not refer to him by name. While Mr. Easley does not recall the precise verbiage he used, he indicated generally that "roadblocks and egos need to be removed from office" and that they should be replaced by "people who care about the town and have compassion for its residents."

25. In no way was Mr. Easley's comment threatening, obscene, or otherwise inappropriate. Here merely expressed disagreement with the President of the Town Council.

26. Shortly after Mr. Easley posted this comment to Facebook, he was removed by the Town Council from its private Facebook group. On information and belief, the only reason that he was removed from the private Facebook group was that Mr. Easley expressed an opinion critical of the Town Council and its leadership.

27. There was obviously no justification for Mr. Easley's removal from the Facebook group due to his criticism.

28. Emily Galloway is also an adult resident of the Town and is a Facebook user. She has resided in the Town for more than five years.

29. Ms. Galloway was previously allowed to become a member of the Town Council's private Facebook group, and she remained a member for several years. – 20minutes

30. In late April of 2023, Ms. Galloway made a comment in a different "private" Facebook group. While this group is operated by the Vice President of the Town Council, it is not the official Facebook group or Facebook page of the Town or the Town Council. In a recent campaign-related statement, the Vice President had indicated that approximately 500 persons resided in the Town and so, in her comment, Ms. Galloway asked the Vice President of the Town Council how, if that were so, the Facebook group in which she was posting (which also pertained to the Town) had 800 members.

31. In no way was Ms. Galloway's comment threatening, obscene, or otherwise inappropriate.

32. The Vice President of the Town Council did not directly answer Ms. Galloway's question. Instead, the Vice President responded to the question by removing her from the private group in which she had asked the question. Additionally, the Town Council responded by removing her from the Town Council's private Facebook group.

33. There was obviously no justification for Ms. Galloway's removal from the Facebook group

due to her question.

34. It is the plaintiffs' understanding that, in addition to denying persons access to the Town Council's private Facebook group and removing persons from this group, the Town Council also routinely deletes individual comments posted in the group by members of the group due solely to the viewpoint expressed in those comments.

35. The manner in which the Town Council operates a private Facebook group, accessible only to members of the group, impinges on the right of the plaintiffs and of other persons to receive information from the Town Council. There is no legitimate interest in failing to make this information available to residents of the Town who do not operate Facebook accounts (who would be able to access this information were the Town's Facebook group public rather than private), to residents of the Town who operate Facebook accounts but who for whatever reason are not members of the private group, or to other members of the public who might have an interest in the activities of the Town Council even if they do not reside in the Town.

36. This is particularly so given that the Town Council utilizes its private Facebook group to share information of profound importance to the Town's residents, such as proposed ordinances and information concerning matters that will be addressed at public meetings of the Town Council, that is not available online in any other manner.

37. The Town Council also utilizes its private Facebook group to discriminate against Facebook users, either by allowing only selected persons to access the group or by deleting particular comments that the Town Council believes to be unfavorable, on the basis of the content and viewpoint of users' expressive activity. There is no basis whatsoever for this discrimination.

38. In addition to desiring that the Town Council's Facebook group not be maintained as a private group, or at the very least that they be granted access to the group, the plaintiffs believe

strongly that any discussion of Town matters on any Facebook page or group maintained by the Town Council should allow for a robust discussion of ideas. The Town Council's deletion of selected comments based on the content or viewpoint of those comments impinges, without justification, on the plaintiffs' right to receive information.

39. The plaintiffs all wish to be able use any Facebook page or group maintained by the Town Council to comment on, and express their opinions on, matters of importance to the Town and its residents. This includes commenting on posts by the Town Council as well as on any comments to those posts from other Facebook users.

40. As a result of the actions or inactions of the defendants, the plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

41. At all times the defendants have acted under color of state law.

Legal Claims

42. The manner in which the Town Council maintains a private Facebook group to which the plaintiffs have been denied access violates the plaintiffs' First Amendment right to receive information.

43. The manner in which the Town Council removes Facebook users from its private Facebook group and/or denies access to its private Facebook group based on the content or viewpoint of users' expressive activity violates the plaintiffs' First Amendment right to engage in speech.

Request for Relief

WHEREFORE, the plaintiffs respectfully request that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendants have violated the rights of the plaintiffs for the reasons described above.

3. Issue a preliminary injunction, later to be made permanent, enjoining the defendants from maintaining a “private” Facebook group or, in the alternative, enjoining the defendants from refusing the plaintiffs access to its Facebook group.
4. Issue a preliminary injunction, later to be made permanent, enjoining the defendants from deleting comments within its Facebook group on the basis of the content or viewpoint of those comments.
5. Award the plaintiffs their costs and attorneys’ fees pursuant to 42 U.S.C. § 1988.
6. Award all other proper relief.

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