

Rec # 6946

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT J. UHEREK and
O'NEILL A. MUIRHEAD,

Plaintiffs,

v.

SALEM TOWNSHIP and
FRED ROPERTI, individually and
as Supervisor of Salem Township,

Defendants.

Case: 2:08-cv-11260
Judge: Feikens, John
Referral MJ: Hluchaniuk, Michael J.
Filed: 03-24-2008 At 11:45 AM
CMP UHEREK ET AL V. SALEM TOWNSHIP
ET AL (JTC)

BODMAN LLP
Cooperating Attorneys
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Attorneys for Plaintiffs

COMPLAINT

NOW COMES Plaintiffs Robert J. Uherek and O'Neill A. Muirhead, by their attorneys,

Bodman LLP, and state as follows:

JURISDICTION AND VENUE

1. Count I of this action arises under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983. Count II of this action is brought pursuant to M.C.L. §§ 15.261-.275.

2. This Court has jurisdiction over Count I of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. This Court has supplemental jurisdiction over Count II of this action pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff Uherek is a citizen of the United States and a resident of Salem Township, Washtenaw County, Michigan.

5. Plaintiff Muirhead is a citizen of the United States and a resident of Salem Township, Washtenaw County, Michigan.

6. Defendant Salem Township is a political subdivision of the state of Michigan located in Washtenaw County, Michigan.

7. Defendant Roperti is a resident of and the Supervisor of Salem Township. Defendant Roperti is sued both individually and in his capacity as Township Supervisor.

FACTS COMMON TO ALL COUNTS

8. Defendant Salem Township is a municipal corporation governed by its township board. The township board regularly conducts public meetings subject to the Michigan Open Meetings Act, M.C.L. § 15.261 *et seq.*

9. The board has adopted a set of rules which provide that private citizens may not use “personally abusive epithets” or “grossly indecent language” during the public comment portion of its meetings.

10. From 2003 until 2007, intense public criticism arose during the board meetings. The issues raised by private citizens included, but were not limited to, awarding of contracts to certain entities, conflicts of interest, the building of a new township hall, the official conduct and demeanor of Defendant Roperti and other members of the board, rules restricting the speech of citizens during board meetings, and conflicts of interest and nepotism in the hiring of township office and fire department personnel.

11. Plaintiffs were vocal and frequent speakers before the board regarding the aforementioned issues of public concern.

12. On January 8, 2008, Plaintiffs were in attendance when the board held its regular meeting at the township hall.

13. During the meeting, Defendant Roperti opened up the meeting for public comment, at which time Plaintiff Uherek attempted to address the board. Plaintiff Uherek attempted to

comment on the performance of Defendant Roperti as supervisor, stating that Defendant Roperti had “demonstrated that [he] cannot be counted on for openness and transparency.”

14. Defendant Roperti abruptly interrupted Plaintiff Uherek during his public comment and demanded that he “be quiet.” Defendant Roperti then insisted that Plaintiff Uherek remove himself from the meeting. Defendant Roperti summoned a Michigan State Police trooper and a Washtenaw County Sherriff’s deputy into the meeting to assist in removing Plaintiff Uherek from the meeting. The trooper and deputy escorted Plaintiff Uherek from the meeting room.

15. Shortly thereafter, Plaintiff Muirhead questioned the propriety of Defendant Roperti’s actions in removing Plaintiff Uherek from the board meeting, at which time Defendant Roperti threatened to have Plaintiff Muirhead removed from the meeting if Plaintiff Muirhead did not “be quiet.”

16. Shortly thereafter, Defendant Roperti demanded that Plaintiff Muirhead remove himself from the meeting. Again, Defendant Roperti requested that the state trooper and sheriff’s deputy remove Plaintiff Muirhead from the meeting.

17. At no time during the public comment portion of the Board meeting did Plaintiffs use obscene or indecent language or engage in any threatening or disruptive behavior.

COUNT I
42 U.S.C. § 1983 – VIOLATION OF THE FIRST AMENDMENT

18. Plaintiffs hereby incorporate by reference paragraphs 1 – 17.

19. Plaintiffs' comments on the professional conduct and demeanor of Defendant Roperti are speech protected under the First Amendment to the United States Constitution.

20. Plaintiffs made their comments during the public comment portion of a board meeting, a limited purpose public forum.

21. Defendant Roperti, acting as a policy-maker for Defendant Salem Township, under color of state law, and in violation of the First Amendment, removed Plaintiffs from the January 8th board meeting because Plaintiffs exercised their First Amendment right to comment on the professional conduct of Defendant Roperti, an elected government official.

22. Defendant Roperti's unconstitutional acts deprived Plaintiffs of their First Amendment rights.

23. Plaintiffs will continue to attend township meetings and wish to comment on the professional conduct and demeanor of township officials during the public comment period.

24. Defendant Roperti's actions have had the effect of chilling the protected speech of Plaintiffs and other citizens seeking to comment on the professional conduct and demeanor of township officials during township meetings.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants for: a permanent injunction prohibiting Defendants from removing persons from board meetings based upon the critical nature of their speech; nominal damages; punitive damages as to Defendant Roperti; costs of this action; attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988; and such other and further relief as the Court deems proper.

COUNT II
VIOLATION OF THE MICHIGAN OPEN MEETINGS ACT

25. Plaintiffs hereby incorporate by reference paragraphs 1 – 24.

26. Defendant Salem Township is subject to the Michigan Open Meetings Act because it is a “public body” as defined by M.C.L. § 15.262(a).

27. M.C.L. § 15.263(6) prohibits governmental bodies from excluding citizens from meetings otherwise open to the public except for a breach of the peace actually committed at the meeting.

28. Defendant Roperti, acting as a policy-maker for Defendant Salem Township, intentionally violated M.C.L. § 15.263 when he had Plaintiffs removed from the board meeting for commenting on his professional conduct and demeanor.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants: permanently enjoining Defendants from removing citizens from board meetings for commenting on the professional conduct and demeanor of township officials; awarding Plaintiffs actual and exemplary damages as to Defendant Roperti pursuant to M.C.L. § 15.273(1); and awarding Plaintiffs costs of this action and attorneys’ fees pursuant to the M.C.L. § 15.271(4).

Respectfully submitted,

Bodman LLP

By: 

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March __, 2008

CIVIL COVER SHEET

 County in which action arose Washtenaw

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Washtenaw ✓
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Bodman LLP
201 S. Division St., Ste. 400
Ann Arbor, MI 48104 (734) 761-3780

DEFENDANTS

County of Residence of First Listed Defendant Washtenaw
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med, Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1393ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 495 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAXATION	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Fical Access to Justice
	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983

Brief description of cause:
Violations of Plaintiffs' First and Fourteenth Amendment rights, as well as the Michigan Open Meetings Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
