

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF WISCONSIN

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WALTER FIEDOROWICZ,

Plaintiff,

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

v.

THE CITY OF PEWAUKEE,

Defendant.

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**COMPLAINT**

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Section 17.0702(c) of the City of Pewaukee (the “City”) Ordinances (the “election campaign sign ordinance”) is a content-based restriction on core political speech that violates the First Amendment and article I, § 3 of the Wisconsin Constitution. This lawsuit challenges that ordinance on its face and as the City has applied it and continues to apply it to the plaintiff.

The plaintiff, Walter Fiedorowicz, by his attorneys, LaFollette Godfrey & Kahn and the American Civil Liberties Union of Wisconsin Foundation, for his Complaint against the City, alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action under 42 U.S.C. § 1983 to redress, by declaratory and injunctive relief, the deprivation, under color of state law, of rights guaranteed by the First and Fourteenth Amendments and article I, § 3 of the Wisconsin Constitution. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3), and it has supplemental jurisdiction over the plaintiff’s state law claims under 28 U.S.C. § 1367(a).

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because all of the parties reside within this judicial district and all of the claims asserted by the plaintiff arose within this judicial district.

### **PARTIES**

3. Walter Fiedorowicz is an adult resident of the city of Pewaukee, Wisconsin, whose home address is N29 W26696 Peterson Drive, Pewaukee, Wisconsin 53072.

4. The City of Pewaukee is a municipality located in Waukesha County, Wisconsin. The City is a body politic and corporate, incorporated under the Wisconsin statutes, with the power to sue and be sued.

### **FACTS**

5. Section 17.0702(c) of the City of Pewaukee Ordinances, duly enacted under color of state law, prohibits parties from placing “election campaign signs” on private property, without a permit from the City, more than 45 days before an election or more than seven days after an election.

Election Campaign Signs may be permitted in any district without a permit provided that permission shall be obtained from the property owner, renter, or lessee, and provided that such sign shall not be erected more than 45 days prior to an election and shall be removed within seven (7) days following the election.

“It shall be unlawful for any person ... to ... erect ... any sign without first complying with the requirements of this section.” A copy of the Ordinance is appended to this Complaint as Exhibit A.

6. As a resident and voter, Mr. Fiedorowicz supports holding a referendum on the consolidation of the City of Pewaukee and the Village of Pewaukee. The City Council, however, has refused to take the necessary legal steps to hold a referendum on that issue. To obtain public support for his position, Mr. Fiedorowicz prepared signs expressing support for a referendum

and obtained permission from property owners to place the signs on their property within the City. The signs state: “Let us vote; 1 Pewaukee Committee.”

7. Intending to follow the requirements of the election campaign sign ordinance, Mr. Fiedorowicz expressly sought permission from the City to place his signs on private property within the City more than 45 days before the Fall 2002 election.

8. At a May 6, 2002 City of Pewaukee Common Council meeting, the Council in open session denied Mr. Fiedorowicz permission to erect his signs by a vote of three to two, with one abstention. According to the Council and the City Attorney, the election campaign sign ordinance, § 17.0702(c) of the City’s Ordinances, applied to Mr. Fiedorowicz’s request, and the Council denied him permission to place his signs on private property more than 45 days before the Fall 2002 election.

9. By letter to the City’s Mayor, Jeffrey Nowak, dated July 11, 2002, Mr. Fiedorowicz asked the City to reconsider its decision denying him permission, based on the election campaign sign ordinance, to place his signs on private property in the City. The City did not respond to that letter.

### **CLAIMS**

10. The plaintiff repeats and realleges as if fully set forth herein the allegations in paragraphs 1 through 10 of this Complaint.

11. Pursuant to the First Amendment, “Congress shall make no law ... abridging the freedom of speech ....”

12. Pursuant to article I, § 3 of the Wisconsin Constitution, “no laws shall be passed to restrain or abridge the liberty of speech ....”

13. Mr. Fiedorowicz's signs, supporting a referendum on the consolidation of the City and the Village of Pewaukee, constitute political speech that is entitled to the strongest protection under the First Amendment and its state constitutional counterpart.

14. The ordinances of the City represent the officially enacted and promulgated policies of the City with respect to their respective subject matters, and the election campaign sign ordinance, § 17.0702(c) of the City's Ordinances, represents the official policy of the City with respect to election campaign signs specifically.

15. The election campaign sign ordinance, § 17.0702(c) of the City's Ordinances, on its face and under color of state law, violates the First Amendment and article I, § 3 of the Wisconsin Constitution by improperly restricting or prohibiting political speech – subjecting it to a permit requirement that neither advances a compelling state interest nor is narrowly tailored to advance a state interest.

16. In addition, the City's decision to deny Mr. Fiedorowicz's request for permission to place his signs on private property within the City further violates the First Amendment and article I, § 3 of the Wisconsin Constitution by improperly prohibiting political speech.

17. Mr. Fiedorowicz has been actually limited and restrained in the exercise of his free speech rights by the election campaign sign ordinance and the City's decision. If he were to place his signs on private property in the City, he fears, the City would issue a citation for violating the Ordinance.

18. Furthermore, the Ordinance has had the effect of chilling the speech of others, similarly-situated, who might otherwise have engaged in similar acts of expression.

### **RELIEF REQUESTED**

WHEREFORE, the plaintiff requests that the Court:

A. Enter a declaratory judgment that § 17.0702(c) of the City’s Ordinances, the election campaign sign ordinance, on its face and as applied to Mr. Fiedorowicz, violates the First Amendment and article I, § 3 of the Wisconsin Constitution;

B. Enter an order enjoining the City from enforcing the election campaign sign ordinance against – or otherwise prohibiting – Mr. Fiedorowicz and others from placing such signs on private property in the City with the permission of the property owners;

C. Award the plaintiff his reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988; and,

D. Award the plaintiff such other and further relief as is appropriate under the circumstances.

Dated: August \_\_\_\_\_, 2002.

LA FOLLETTE GODFREY & KAHN

By: \_\_\_\_\_

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