

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEAN WATER ACTION, INC.	:	
	:	
Plaintiff	:	
	:	
vs.	:	C.A. No. 04-
	:	
TOWN OF JOHNSTON by and through its Town	:	
Council Members, Robert Russo, Stephen	:	
Machioni, William Santilli, Ernest Pitochelli and	:	
Joseph Wells individually and in their official	:	
capacities and its FINANCE DIRECTOR Leo	:	
Fox in his official capacity	:	
	:	
Defendants	:	

VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES

INTRODUCTION

1. This is a civil action for injunctive and declaratory relief and damages. The Plaintiff, Clean Water Action, Inc. is a non-profit organization dedicated to clean, safe and affordable water, prevention of health-threatening pollution, creation of environmentally-safe jobs and businesses and empowerment of people to make democracy work. Clean Water Action seeks to challenge the constitutionality of a recent prohibition on political canvassing in Johnston after 7:00 p.m. The Town Council recently approved Clean Water Action’s application for a canvassing permit, but, despite no ordinance or requirement in Town law, limited the canvassing to before 7:00 p.m. The plaintiff alleges that political canvassing is a form of expression protected by the First Amendment to the

United States Constitution and Article I, Section 21 of the Rhode Island Constitution.

Moreover, Plaintiff alleges that the time limitation violates its federally and state protected free speech rights.

JURISDICTION

2. This is an action for declaratory and injunctive relief and damages and is brought pursuant to 28 U.S.C. § 2201, 2202 with respect to the declaratory remedy sought. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343 and pursuant to 42 U.S.C. § 1983. Plaintiff seeks to redress the deprivation of Civil Rights secured it under the Constitution of the United States, in particular, but not limited to, the First and Fourteenth Amendment thereto.

PARTIES

3. PLAINTIFF Clean Water Action, Inc. (“Clean Water Action” or “Plaintiff”) is a non-profit organization, organized and existing under the laws of the District of Columbia and licensed to do business and doing business in the State of Rhode Island with its location at 741 Westminster Street, Providence, Rhode Island.

1 DEFENDANT TOWN OF JOHNSTON is a municipal corporation duly created pursuant to the laws of the State of Rhode Island and is being sued by and through its Town Council Members ROBERT RUSSO, STEPHEN MACCHIONI, WILLIAM SANTILLI, ERNEST PITOCELLI and JOSEPH WELLS. These Defendants are being sued individually and in their official capacities as Town Council Members.

5. Defendant Town of Johnston is also being sued through its Finance Director LEO FOX as this complaint seeks damages. Defendant Fox is only being sued in his official capacity.

FACTUAL BACKGROUND

6. Political canvassing is a form of expression protected by the First Amendment to the U.S. Constitution and Article I, Section 21 of the Rhode Island Constitution.
7. Political canvassing is a vital part of Clean Water Action's program. These canvassers disseminate information about Clean Water Action's activities, request residents to sign petitions in support of said activities, and solicit members and donations for Clean Water Action.
8. Clean Water Action has been canvassing in the State of Rhode Island since July 1990.
9. Clean Water Action has found that door-to-door canvassing is an effective way of disseminating information about its activities to a large segment of the population. While canvassing, where there is a willing adult at home, canvassers discuss current public policy issues, listen to the resident's opinion, distribute educational materials about timely environmental and/or civic issues free of charge, encourage residents to take action by conducting grassroots lobbying, request signatures on petitions, and recruit membership dues and contributions to support Clean Water Action's activities. Funds raised by the canvassers benefit Clean Water Action's activities.
10. Clean Water Action's civic public policy issues include many that directly affect the residents of Rhode Island generally and Johnston specifically as voters, consumers and area residents.
11. A staff list including social security number and birth dates along with the neighborhoods that will be canvassed is sent to the Johnston Police Department each night. There has never been a problem in the past with any Clean Water Action canvasser.
12. Past experience has shown that political canvassing continues to be effective after 7:00 p.m. In fact, the canvassers do call backs for people who specifically ask the canvasser to come back between 8:00 p.m. and 9:00 p.m.

13. Residents of the State of Rhode Island have in the past broadly and warmly received Clean Water Action's canvassers between the hours of 4:00 p.m. and 9:00 p.m.
14. Over half of the residents with whom Clean Water Action talks sign petitions or provide some other form of support. The hours of 4:00 p.m. to 9:00 p.m. weekdays are Clean Water Action's standard hours of canvassing in every community. In fact, Clean Water Action finds that its ability to talk to more responsive people is between the hours of 6:00 p.m. and 9:00 p.m.
15. There is no Johnston Ordinance, Code or Law that prohibits political canvassing after 7:00 p.m.
16. Despite this, on February 9, 2004, Council Member Wells stated at a duly organized Town Council Meeting hearing on the application of Clean Water Action for a canvassing permit:
"Every year you come before us and every year we have the same discussion. I don't know about the people in Districts 1 and 2, 4 and 5, but people in my district complain when you're knocking on the door at eight thirty or nine o'clock at night. I say seven o'clock and not any later than that, Mr. President. That's a suggestion."
17. No other rationale was offered by Defendants for limiting the Plaintiff's canvassing activities to before 7:00 p.m.
18. Council Member and President Russo replied: "Motion by Councilman Wells to grant, limiting time of restriction. I'll second that."
19. Council Member and President Russo continued later by stating "Motion on the table by Councilman Wells, second by myself to grant subject to a seven o'clock restriction on all canvassing. All in favor?"
20. Whereupon the vote was taken and the motion passed to grant Clean Water Action's canvassing permit subject to a seven o'clock restriction.
21. At all times relevant hereto, Defendants acted under color of law.

22. Plaintiff has no adequate remedy at law.
23. Plaintiff has suffered a loss of income as a direct result of the time limitation imposed upon Clean Water Action by the Defendants.

COUNT I

(First Amendment/42 U.S.C. § 1983)

24. Political canvassing is a recognized form of expression. Moreover, the conduct of canvassing is an integral and essential part of the expressive act.
25. Political canvassing is a form of expression of ideas protected by the First and Fourteenth Amendments to the United States Constitution.
26. The action taken by the Johnston Town Council prohibits and criminalizes political canvassing after 7:00 p.m.
27. The action taken by the Johnston Town Council violates the free speech rights of the Plaintiff to express and disseminate Plaintiff's ideas and beliefs and to solicit members and donations which are protected by the First and Fourteenth Amendments to the U.S. Constitution.
28. The action taken by the Johnston Town Council is not narrowly tailored to meet a substantial or compelling governmental interest.
29. Defendants could achieve any legitimate objectives in regulating canvassing activities by less restrictive means.

WHEREFORE, the Plaintiff requests, that the Court provide the following relief pursuant to

42 U.S. C. § 1983:

- A. Enter a Declaration that the action taken by the Johnston Town Council to limit Clean Water Action's political canvassing to 7:00 p.m. violates the First and Fourteenth Amendments to the U.S. Constitution, and is therefore unconstitutional and in derogation of the First and Fourteenth Amendments to the U.S. Constitution.

- B. Issue a Temporary, Preliminary and Permanent Injunction against the Defendants, their attorneys, officers, servants, employees and agents, and all persons acting in concert with them from a) denying plaintiff the right to canvass until 9:00 p.m., b) arresting, harassing or commencing criminal, civil, or administrative proceedings against the plaintiff, its canvassers, or any persons acting in concert with them based upon their conducting peaceful canvassing activities in the Town of Johnston before 9:00 p.m.
- C. Award Plaintiff its compensatory damages for loss of income attributable to the unconstitutional restrictions imposed upon Plaintiff's canvassing.
- D. Award Plaintiff its costs, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
- E. Award such further relief as this Court deems fair and just.

COUNT II

(Article I, Section 21 of the Rhode Island Constitution)

The action of the Johnston Town Council as described above violates the Plaintiffs' right of free expression to express and disseminate Plaintiff's ideas and beliefs and solicit members and donations as protected by Article I, Section 21 of the Rhode Island Constitution.

WHEREFORE, the Plaintiff requests that this Court:

- A. Enter a Declaration that the action taken by the Johnston Town Council to limit Clean Water Action's political canvassing to 7:00 p.m. violates Article I, Section 21 of the Rhode Island Constitution.
- B. Issue a Preliminary and Permanent Injunction against the enforcement of the prohibition.
- C. Award such further relief as this Court deems fair and just.

I verify that the within allegations are true and accurate to the best of my knowledge and information.

Tracy Carlson, Clean Water Action, Inc.

Island.

Signed and sworn to before me this _____ day of March, 2004 in Providence, Rhode

Notary Public

My commission expires:

Plaintiff Clean Water Action, Inc.

By its Attorney:

CAROLYN A. MANNIS, ESQ. #4275

As volunteer attorney for the R.I. Affiliate of the

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