

STATE OF MICHIGAN
IN THE 31ST CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR
201 McMorran Blvd, Port Huron, MI 48060

MICHAEL ZORAN, KYLE SUNDAY,
and AUSTIN ADAMS,
Plaintiffs,

Case No.: 13-001841-CZ
Honorable Michael L. West

vs.

FIRST AMENDED COMPLAINT
(NO NEW PARTIES)

TOWNSHIP OF COTTRELLVILLE, and
KELLY ANN LISCO aka KELLY ANN
FISCELLI-LISCO aka KELLY ANN
FISCELLI, in her individual capacity,
Defendants

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FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs MICHAEL ZORAN, KYLE SUNDAY, and AUSTIN ADAMS, by and through counsel, Outside Legal Counsel PLC, and as their First Amended Complaint states as follows:

PARTIES

1. Plaintiff MICHAEL ZORAN is a resident of the State of Michigan and is a duly elected and serving trustee on the Board of Trustees for the Township of Cottrellville, Michigan
2. Plaintiff KYLE SUNDAY is a resident of the State of Michigan.
3. Plaintiff AUSTIN ADAMS is a resident of the State of Michigan.
4. Defendant TOWNSHIP OF COTTRELLVILLE (hereinafter “Defendant TOWNSHIP”) is a municipal corporation formed under the laws of the State of Michigan with its offices located at 7008 Marsh Road, Cottrellville, MI 48039 and is subject to the requirements of the *Open Meetings Act*, MCL 15.261 et seq.

5. The Board of Trustees of the Township of Cottrellville (hereinafter “Board”) is a public body as that term is defined by Michigan’s *Open Meetings Act*, MCL 15.262(a).

6. Defendant KELLY ANN LISCO aka KELLY ANN FISCELLI-LISCO aka KELLY ANN FISCELLI is the elected supervisor of the Defendant TOWNSHIP but, on information and belief, is holding her office contrary to the requirements of MCL 201.3(4). An application for *quo warranto* is currently pending with the Michigan Attorney General. Moreover, it is unclear of the exact legal name of said supervisor given she goes by different names. For purpose of this complaint, this person is referenced as “Defendant LISCO” herein given that this is her listed legal name appearing in previous criminal court records of the 72nd District Court of St. Clair County, Michigan which presumably is the supervisor’s full legal name.

JURISDICTION

7. This Court has jurisdiction by statute pursuant to MCL 15.271(2), MCL 15.273(3), and by Court Rule pursuant to MCR 2.605.

8. Venue is proper in this case as the public body serves in this county. MCL 15.271(2).

GENERAL ALLEGATIONS

9. Each month, the Board regularly meets to deliberate public issues, conduct Township business, and hear the statements of the public under the requirements of the *Open Meetings Act*, MCL 15.261 et seq.

10. Michigan’s *Open Meetings Act* mandates that a person “shall be permitted to address a meeting of a public body under rules established and recorded by the public body,” MCL 15.263(5).

11. According to the Michigan Attorney General Opinion 5716, these rules must be reasonable, flexible and designed to encourage public expression and not discourage or prohibit it.

12. Pursuant to this mandate, Defendant TOWNSHIP has, on information and belief, passed by resolution or has by custom limited citizens to address the Board on any topic for up to three (3) minutes (hereinafter “3 Minute Rule”).

13. At the decision of Defendant LISCO under unknown authority, Plaintiff MICHAEL ZORAN, as trustee, is only allowed to discuss topics of his official concern as a member of the public for three (3) minutes.

14. As chairperson of the Board’s regular meeting, Defendant LISCO’s duty and responsibility is to permit members of the public to address the Board up to three total minutes under rules established and recorded by the Board designed to encourage public expression and not discourage or prohibit such expression.

15. On information and belief, Defendant TOWNSHIP has no established and recorded policy or ordinance banning or prohibiting the topic or topics which may not be addressed to the Board during the public comment portions of Board meetings.

16. In fact, it is the Defendant TOWNSHIP's only known written public policy is as follows as taken from Exhibit A:

We are very interested in hearing your views on any item on our meeting agenda or any other issue of concern to you that is within the scope of authority of your township government.

17. With no such established or recorded policy, Defendant LISCO has permitted the public to question and discuss the personal fitness of members of the Board to continue in public office.

18. This factual basis of this lawsuit is limited to the events of the May 8, 2013 Township Board's meeting. An electronic video recording is within the possession of Plaintiffs' counsel.

19. At the May 8, 2013, Defendant LISCO, without objection, comment, or gaveling, permitted Planning Commissioner Chair Pat Runyon to speak for three full minutes on the personal fitness and personal characteristics and actions of Plaintiff MICHAEL ZORAN to continue to serve in the capacity as elected trustee for the Township.

20. Following Chairperson Runyon, the next public speaker was Ellen Jones who also criticized and questioned Plaintiff MICHAEL ZORAN's fitness and personal characteristics and actions to hold elected office.

21. Plaintiff ZORAN listened to these citizens' public addresses without interruption or objection as to the content and viewpoint of their public addresses.

22. Such criticism and questioning of personal fitness for office is of public concern and is protected speech under the United States Constitution. See *Gault v City of Battle Creek*, 73 F.Supp 2d 811 (WD Mich 1999).

23. However, when such criticism was publicly addressed by certain Plaintiffs against Defendant LISCO, Defendant LISCO gaveled down, prohibited, and otherwise obstructed public addressing of her fitness for office.

24. On May 22, 2013, Defendant LISCO pled guilty in the 72nd District Court in Marine City, Michigan to the charges of failing to report an accident and making a false statement on a state license or permit application instead of the alleged count of an improper change of address on an operator's license.

25. At the same hearing, a charge of failure to stop at the scene of property damage accident was dismissed by the St. Clair County Prosecutor.

26. On information and belief as to the guilty plea to failing failure to report an accident, Defendant LISCO was sentenced to 20 days in the county jail with no credit for time served, which would be suspended upon payment of a \$200 fine.

27. On information and belief as to the guilty plea of making a false statement on a state license or permit application, Defendant LISCO was again sentenced to 20 days in the county jail with no credit for time served, which would be suspended upon payment of a \$200 fine.

28. During the public comment portion of the May 8, 2013, Plaintiff KYLE SUNDAY began to address the Board regarding Defendant LISCO's pending criminal actions outlined above.

29. Defendant LISCO directed to Plaintiff KYLE SUNDAY that she does not comment about her personal business.

30. While Defendant LISCO is not required to return comment or respond by law, Defendant LISCO is required to sit quietly given that Defendant TOWNSHIP has opened the public comments to reviews of fitness and personal characteristics and actions to hold office just as Plaintiff MICHAEL ZORAN suffered from Chairperson Runyon and Ms. Jones, a citizen.

31. Instead, Defendant LISCO ordered Plaintiff KYLE SUNDAY as follows in interrupting Plaintiff KYLE SUNDAY's public address of the Board:

[interrupting speaker] I DO NOT DISCUSS MY PERSONAL BUSINESS AND IF YOU [inaudible] I WILL ASK YOU TO BE EXCUSED. YOU CAN GO TO THE COURT CASE; I'M SURE YOU'RE WELL AWARE OF THE COURT DATE AND TIME. OTHER THAN THAT, I DO NOT DISCUSS IT. IF YOU HAVE SOMETHING ELSE TO TALK ABOUT OR AGREE TO, OTHERWISE SIT DOWN. (emphasis added).

32. Had Plaintiff KYLE SUNDAY continued to talk about this topic after being ordered to sit down, Plaintiff KYLE SUNDAY would have likely been ordered out of order and removed from the public meeting.

33. In addition, Defendant LISCO also ended Plaintiff KYLE SUNDAY's address to the Board, in mid-presentation, at approximately 02 minutes, 15 seconds, and denying him his full and rightful three minutes provided to him under Michigan law.

34. Next, Plaintiff AUSTIN ADAMS began to address the Board regarding Defendant LISCO's fitness and personal characteristics and actions to hold office just as Plaintiff MICHAEL ZORAN suffered from Chairperson Runyon and Ms. Jones, a citizen.

35. Defendant LISCO demanded to know Plaintiff AUSTIN ADAMS' home address to begin his address to the Board.

36. When the legality of the mandatory address pronouncement was raised by Plaintiff MICHAEL ZORAN regarding that such was not required under the *Open Meetings Act*,

Supervisor Lisco stated: "IT'S A REQUIREMENT OF MY MEETING, THANK YOU MICHAEL."

37. Later in the meeting, Plaintiff KYLE SUNDAY re-approached the podium during another public comment portion of the meeting and after giving his home address after seeing the fate of Plaintiff AUSTIN ADAMS inquired "for future reference, do I have to give you my address; does it really matter?"

38. Defendant LISCO stated "I require that, for... on my meetings."

39. Then Township Clerk Lori Russelburg, a board member, then stated "if I could say, its not reflected in anything out there... [inaudible] its to verify (trailing off)."

40. On the podium during the presentation on May 8, 2013 is Defendant TOWNSHIP's alleged policy. Nowhere in said policy does it require giving a home address as a condition to present public comments to the Board. A copy is attached as Exhibit A.

41. Earlier at the beginning of the public comment portion of the May 8, 2013 meeting, Defendant LISCO did not require a public speaker, Deputy Clerk Helen Hazuka, to give her name and address as a precondition to publicly address the Board.

42. Deputy Clerk Helen Hazuka's public address was not cancelled or ordered halted by Defendant LISCO for lack of pronounced address.

43. Defendant LISCO did not indicate or refer to any rules established and recorded by the Board as a precondition of public addressing the Board.

44. After Plaintiff AUSTIN ADAMS politely refused to assent to Defendant LISCO's unlawful demand, Defendant LISCO then ended Plaintiff AUSTIN ADAMS' public address at approximately two (2) minutes for failing to provide an address and denied him his full and rightful three minutes provided to him under Michigan law.

45. Also speaking was Gary Issac, a Cottrellville Township resident.

46. Mr. Issac was permitted by Defendant LISCO to speak *greater* than three (3) minutes.

47. Next, Plaintiff MICHAEL ZORAN approached the podium to speak due to the unusual unwritten policy of Defendant LISCO to require Plaintiff MICHAEL ZORAN, despite being a duly elected trustee, to discuss issues he wishes to raise only during the public comment section of the meeting.

48. Plaintiff MICHAEL ZORAN was allowed to speak for only 02 minutes, 04 seconds when Defendant LISCO ended Plaintiff MICHAEL ZORAN' public address and denied him his full and rightful three minutes provided to him under Michigan law.

49. Later in the meeting, another speaker, an expert in information technology, was allowed to address the Board giving *without* his address as a precondition to be permitted to address a meeting of a public body.

COUNT I
PRECONDITIONS TO SPEAK
VIOLATION OF OPEN MEETINGS ACT, MCL 15.263(5)
(AGAINST DEFENDANT TOWNSHIP)

50. The previous paragraphs are realleged within this Count word for word herein.

51. There is no requirement under the *Open Meetings Act* to require the pronouncement of a home address as a requirement to permit a public speaker to address the Board during the public comment section of a meeting of the Board.

52. There is no local written policy or ordinance (i.e. a rule or rules established and recorded by the public body) requiring the pronouncement of a home address as a requirement to be permitted to address the Board at a meeting of a public body during the public comment portion.

53. By Defendant LISCO arbitrarily selecting which persons or individuals publicly pronounce a home address to be allowed to speak during public comment, including Plaintiffs, and not requiring it for others without any rule(s) established and recorded, Defendant TOWNSHIP, by the Board as a public body, is violating the public's right to be permitted to address a meeting of a public body.

54. By Defendant LISCO, as chairperson of the meeting, arbitrarily cutting off and prohibiting Plaintiff AUSTIN ADAMS from continuing addressing the Board, as a public body, or to allow to fully address the Board for his legal right to three full minutes due to an unlawful precondition of pronouncing a home address, Defendant violated the *Open Meetings Act* by not permitting Plaintiff AUSTIN ADAMS to address a meeting of a public body under the rules established and recorded by the public body.

55. After inquiry by Plaintiff KYLE SUNDAY whether this is a requirement to give a home address as a precondition of publicly addressing the Board, Defendant LISCO and Clerk Russelburg gave difference and contradictory opinions and, as such, has created confusion as to the rights of public addresses, including Plaintiffs, to address the Board during public comment.

56. Plaintiffs AUSTIN ADAMS and KYLE SUNDAY wish to continue to address the Board in the future without having to give their home addresses publicly due to a lack of any legal requirement.

57. Plaintiffs AUSTIN ADAMS and KYLE SUNDAY fear that failure to give their home address, despite no legal requirement to do so, will subject each or both to be ruled by Defendant LISCO as out of order and will be excluded from future meetings otherwise open to the public as being deemed a breach of the peace actually committed at the meeting pursuant to MCL 15.263(6).

58. Plaintiff MICHAEL ZOREN, as a trustee, implicitly has a fiduciary obligation to see that the laws of the State of Michigan are properly fulfilled by Defendant TOWNSHIP and has the right to hear the issues and concerns of the public during the public comment portion as a public forum to properly exercise his duties as a duly-elected trustee of the Township.

COUNT II
FAILURE TO PROVIDE THREE MINUTES OF PUBLIC ADDRESS
VIOLATION OF OPEN MEETINGS ACT, MCL 15.263(5)
(AGAINST DEFENDANT TOWNSHIP)

59. The previous paragraphs are realleged within this Count word for word herein.

60. Under the *Open Meetings Act*, a person (not merely a local resident) shall be permitted to address a meeting of the Board under rules established and recorded by the Board.

61. Attached as Exhibit A is, on information and belief, are the only ‘rules established and recorded’ by the Board as a public body.

62. The recorded and established rules provide, as enabled under the *Open Meetings Act*, that each person be allowed to address the Board for at least three (3) minutes.

63. When alternative viewpoints or topics of public addressees did not suit or otherwise comport with Defendant LISCO’s self-opinions, Defendant LISCO denies public addressees their full three minutes of public comment at the May 8, 2013 meeting.

64. Plaintiff KYLE SUNDAY’s address to the Board, in mid-presentation, was unlawfully and contrary to the rules and *Open Meetings Act* prohibited after only approximately 02 minutes, 15 seconds, and denying him his full and rightful three minutes provided to him under Michigan law.

65. Plaintiff AUSTIN ADAMS’ address to the Board was unlawfully and contrary to the rules and *Open Meetings Act* prohibited after only approximately two (2) minutes for failing to provide an address and denied him his full and rightful three minutes provided to him under Michigan law.

66. Plaintiff MICHAEL ZORAN’s address to the Board was unlawfully and contrary to the rules and *Open Meetings Act* prohibited after only approximately 02 minutes, 04 seconds when Defendant LISCO ended Plaintiff MICHAEL ZORAN’ public address and denied him his full and rightful three minutes provided to him under Michigan law.

67. Yet, Gary Issac, a Cottrellville Township resident, was permitted to speak greater than three minutes contrary to the rules as authorized under the *Open Meetings Act*.

68. Plaintiffs MICHAEL ZORAN, AUSTIN ADAMS, and KYLE SUNDAY wish to continue to address the Board without having their rights to a full three minutes be impinged by Defendant and/or Defendant LISCO in her role as an agent of Defendant TOWNSHIP.

COUNT III
FAILURE TO PROVIDE PERMIT PUBLIC ADDRESS
VIOLATION OF OPEN MEETINGS ACT, MCL 15.263(5)
(AGAINST DEFENDANT TOWNSHIP)

69. The previous paragraphs are realleged within this Count word for word herein.

70. Criticism and questioning of personal fitness of a public official is of public concern and is protected speech under the United States Constitution. See *Gault v City of Battle Creek*, 73 F.Supp 2d 811 (WD Mich 1999).

71. By Defendant LISCO allowing or otherwise not prohibiting issues of fitness and personal characteristics and actions to hold office, to the extent it *could* ban or regulate such speech, Defendant TOWNSHIP has opened a forum and thus created a forum actually permitting this type of speech.

72. Once such a forum was open to such speech topics, Defendant TOWNSHIP was not permitted, by and through its Board or by Defendant LISCO's actions or omissions, to prohibit similar speech without such being a content-based or viewpoint regulation.

73. By Defendant LISCO ordering Plaintiff KYLE SUNDAY to cease (i.e. "otherwise sit down") discussing her fitness and personal characteristics and actions to hold office violated Plaintiff KYLE SUNDAY's right to be permitted to address a meeting of a public body pursuant to the *Open Meetings Act*.

COUNT IV
INTENTIONALLY VIOLATION OF OPEN MEETINGS ACT, MCL 15.273
(AGAINST DEFENDANT LISCO)

74. The previous paragraphs are realleged within this Count word for word herein.

75. Defendant LISCO is a public official under the *Open Meetings Act*.

76. Defendant LISCO had and has actual knowledge of the "3 Minute Rule" at the May 8, 2013 Board meeting and intentionally violated the *Open Meetings Act* by prohibiting Plaintiffs, individually and collectively, from exercising their rights to be permitted to address a meeting of a public body under rules established and recorded.

77. Plaintiffs are individually and/or collectively entitled to actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees.

RELIEF REQUESTED

WHEREFORE, Plaintiffs requests this Court enter an order and final judgment of this Court:

- a. Declaring that Defendant TOWNSHIP, by its public body, is in violation of the *Open Meetings Act* by any and all of the ways outlined above;
- b. Declaring that Defendant LISCO's actions outlined in Count IV was in violation of MCL 15.273;
- c. enjoining Defendants and its related public bodies and agents from further non-compliance for violations of the *Open Meetings Act* pursuant to MCL 15.271;
- d. awarding court costs and actual attorney fees for the action against one or both Defendants;
- e. awarding \$500.00 in punitive damages to each Plaintiff against Defendant LISCO;
- f. granting all other relief that Court deems equitable and just.

RESPECTFULLY SUBMITTED:



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