

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PENNY J. NICKERSON,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. _____
	)	
TOWN OF MILTON,	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**VERIFIED COMPLAINT**

**INTRODUCTION**

1. Plaintiff, a resident of Milton, Delaware, brings this action to vindicate her right to express her opinions on issues of national importance by erecting and maintaining signs in the front yard of her home. Following the 2017 presidential election, she placed four signs on her property. They made statements such as “Love Trumps Hate” and “Women’s Rights = Human Rights.” She was told by Milton’s code enforcement officer that the signs violated the Milton Town Code and had to be removed.

2. Following her removal of the signs, she unsuccessfully sought to meet with Town of Milton representatives to explain why the code provision and its enforcement violated her constitutional right to free speech. Instead of meeting with her, Milton arranged for its counsel to write her on its behalf. He did so,

stating that the Milton Town Code prohibited her from displaying the signs except within 90 days before and 14 days after a contested election or referendum.

3. The Town of Milton permits property owners to display many other types of messages year-round. The Code provision enforced against Plaintiff is content based in that it applies to and restricts only certain types of messages – those Milton considers “political.”

4. It is beyond dispute that a sign regulation that treats signs conveying some types of ideas “differently from signs conveying other types of ideas .... is a content-based regulation of speech.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015), and that a “law that is content based on its face is subject to strict scrutiny[.]” *Id.*, 2228 (quoting *Cincinnati v. Discovery Network*, 507 U.S. 410, 429 (1993)). Milton’s regulation cannot survive that scrutiny.

## **PARTIES**

5. Plaintiff Penny J. Nickerson is a citizen and resident of the Town of Milton.

6. Defendant Town of Milton is a political subdivision of the State of Delaware.

## **FACTS**

7. Plaintiff resides at 407 Union Street, Milton, Delaware, in a home she owns and has owned at all times material hereto. A photograph showing the front of her

home, its front yard, the adjent sidewalk and a section of Union Street is attached hereto as Exhibit A.

8. Between November 9, 2016 and mid-February, 2017 Plaintiff erected four signs on her property, between the front of her home and the sidewalk.

Photographs of the four signs are attached hereto as Exbhibit B.

9. These signs express some of Plaintiff's opinions about issues our nation is currently facing.

10. Michael Trotta ("Trotta") is, and has been at all times material hereto, an employee of Defendant, charged with enforcing the Milton Town Code ("Code"). At all times material hereto he was acting within the course and scope of his employment by the Town of Milton.

11. In February, 2017, Trotta told Plaintiff that she had to remove the signs from her front yard because they were political, and that she might be fined if she failed to do so. Plaintiff told Trotta of her belief that she had a constitutional right to display the signs. Nevertheless, she agreed to remove the signs temporarily to give Defendnant the opportunity to sort things out.

12. After removing her signs, Plaintiff wrote Trotta requesting a meeting with Milton officials and its attorney.

13. Representatives of Defendant did not agree to meet with Plaintiff. Instead, counsel for Defendant sent Plaintiff a letter dated March 7, 2017 telling her that

“the Town’s signage regulations pass muster in application to your current signs” and that the “signs do not meet the Town Code on political signs at present.” Counsel’s March 7, 2017 letter also says that “[i]f you did not remove them promptly, the Town may elect to issue a notice of violation and fine(s).” (sic) The letter also told Plaintiff that “[y]ou may place the signs again when the time period for political signs reopens, assuming they meet all other elements of the sign regulations.” A copy of the letter is attached hereto as Exhibit C.

14. Pursuant to Code §220-62, “the time period for political signs” will not reopen until 90 days prior to the next contested election or referendum involving Milton voters.

15. After Plaintiff responded to the March 7, 2017 letter, Defendant’s counsel wrote her again on April 5, 2017. This letter repeated Defendant’s position that the Code allowed her to display “political signs” on her property only during the time period beginning 90 days prior to a contested election or referendum involving Milton voters and ending 14 days thereafter. It also stated that the number of signs she could erect during that period was limited to number of offices contested or issues in the referendum. A copy of that letter is attached hereto as Exhibit D.

16. Plaintiff’s home is located in an area Milton has designated as an R-1 Residential Use District. A copy of Defendant’s Official Zoning Map is attached hereto as Exhibit E.

17. The Code permits numerous type of signs in R-1 Residential Use Districts,

including:

- a. Bulletin boards and similar announcement signs for churches and other nonprofit institutions, provided that they do not exceed 32 square in gross area and are located at least five feet from the property line. Code § 220-64.
- b. Professional and home occupation identification signs. *Id.*
- c. Real estate signs, such as “for sale” and “to let” signs, in R-1 Residential Use Districts, provided that they do not exceed six square feet in area. *Id.*, §220-63F(1).
- d. “Contractor signs” while new construction work in ongoing, provided that they do not exceed 16 square feet in area. *Id.* §220-63F(2).
- e. “Announcement signs stating the future use of a building enterprise, provided that it does not exceed 32 square feet. *Id.* §220-63F(3).
- f. Memorial signs or tablets, provided that they are constructed of certain materials. *See* 220-63E(10)(d).
- g. Occupational signs denoting the name and profession of an occupant in a commercial building provided that they do not exceed 4 1/2square feet in area. *See* 220-63E(10)(e).

18. The definition of “political signs” in §220-63G, which is used to impose discriminatory retrictions on signs considered to convey political messages, explicitly excludes any “legally permitted outdoor advertising sign.”

19. Plaintiff lacks an adequate remedy at law.

## **CLAIMS**

### **Count I – First Amendment**

20. Plaintiff incorporates herein Paragraphs 1 through 19 hereof as if set forth at length.

21. Milton Town Code §§220-62-64 is a content based regulation of speech, which is subject to strict scrutiny. In light of the signs Milton permits in R-1 Residential Use Districts, that regulation fails strict scrutiny.

22. Milton Town Code §§220-62-64 in violates the First Amendment of the United States Constitution.

23. Milton's enforcement of §220-63G against Plaintiff violates the the First Amendment of the United States Constitution.

24. Milton's actions have deprived Plaintiffs of rights to which she is entitled under the First Amendment of the United States Constitution.

### **Count II – Article I, § 5**

25. Plaintiff incorporates herein Paragraphs 1 through 19 and 21 hereof as if set forth at length.

26. Milton Town Code §220-63G violates Article I, § 5 of the Delaware Constitution.

27. Milton's enforcement of §220-63G against Plaintiff violates Article I, § 5 of the Delaware Constitution.

28. Milton's actions have deprived Plaintiffs of rights to which she is entitled under Article I, § 5 of the Delaware Constitution.

### **PRAYER FOR RELIEF**

Wherefore, in light of the foregoing, Plaintiff respectfully requests the following:

- a. A declaration that Milton Town Code §§220-62-64 violate the First Amendment and Article I, § 5 to the extent that they purport to limit the signs that may displayed on private property based on the content of the signs;
- b. Preliminary and permanent injunctions barring Defendant from preventing Plaintiff from expressing her views and opinions by displaying signs on her property;
- c. An award of compensatory damages ;
- d. An award of nominal damages;
- e. An award of costs, expenses and counsel fees pursuant to 42 U.S.C. § 1988, and post-judgment interest.
- f. Such other relief as this Court finds just and proper.

/s/ Richard H. Morse

RICHARD H. MORSE (#531)  
RYAN TACK-HOOPER (#6209)  
ACLU Foundation of Delaware  
100 W. 10<sup>th</sup> St., Suite 706  
Wilmington, DE 19801  
Tel: (302) 654-5326 ext. 103  
rmorse@aclu-de.org

*Counsel for Plaintiff*

May 15, 2017