

**Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE**

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Attorneys for Plaintiff

*Motion for pro hac vice pending

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RIO GRANDE FOUNDATION,

Plaintiff,

vs.

CITY OF SANTA FE, NEW MEXICO; and
CITY OF SANTA FE ETHICS AND
CAMPAIGN REVIEW BOARD,

Defendants,

No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This civil-rights lawsuit challenges a City of Santa Fe law that requires non-profit groups communicating about municipal ballot propositions to disclose the names of their donors to the government. Plaintiff Rio Grande Foundation (the “Foundation”) is a non-profit organization which is exempt from taxation under 26 U.S.C. § 501(c)(3). Like many non-profits, the Foundation is engaged in numerous campaigns to inform the public about issues that the Foundation and its donors deem important. As part of these efforts, the Foundation frequently

communicates to members of the public about state statutes and municipal ordinances in New Mexico—including ordinances being considered by the City of Santa Fe (the “City”).

2. Under a law adopted by the City in 2015, any time a non-profit group spends more than \$250 to communicate with the public about a municipal ballot initiative, that group must disclose the identities of its donors, including their addresses and employers, to the government. Failure to file the necessary disclosures with the City can result in fines of \$500 per day. *See*, Santa Fe City Campaign Code § 9-2.6.

3. This new ordinance chills constitutionally protected speech by non-profit groups and their donors. This lawsuit, which asks for only prospective relief, seeks to declare the City’s donor-disclosure requirements unconstitutional under the First Amendment to the U.S. Constitution, as incorporated against the States by the Fourteenth Amendment; and Article II, §17 of the New Mexico Constitution. Such declaration will ensure that the Foundation and other non-profit groups may speak freely and openly about issues that matter to them, free from the fear that, by doing so, they will be forced to violate the privacy of their donors and potentially subject those donors to harassment and retaliation.

JURISDICTION

4. Plaintiff brings this prospective civil-rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; Article II, §17 of the New Mexico Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. Plaintiff seeks injunctive and declaratory relief against Santa Fe City Code Section 9-2.6’s donor-disclosure requirements for non-profits speaking about municipal ballot propositions, and any associated rules or practices of the City of Santa Fe and the City of Santa Fe Ethics and Campaign Review Board.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

VENUE

6. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(1)–(2).

PARTIES

7. Plaintiff Rio Grande Foundation is a non-profit New Mexico corporation that is tax-exempt under 26 U.S.C. § 501(c)(3).

8. Defendant City of Santa Fe is a municipality and political subdivision of the State of New Mexico.

9. Defendant City of Santa Fe Ethics & Campaign Review Board (the “Board”) is a department of Defendant City of Santa Fe.

10. Plaintiff seeks only prospective declaratory and injunctive relief against Defendants.

STATEMENT OF FACTS

The Rio Grande Foundation and Its Speech About a Proposed Soda Tax

11. The Rio Grande Foundation is a non-profit organization based in Albuquerque, New Mexico. Like thousands of charities, churches, hospitals, and other groups nationwide, it qualifies as a tax-exempt organization under section 501(c)(3) of the Federal Tax Code.

12. The Foundation is funded entirely by donations from private individuals, couples, families, and grants from other organizations. On the basis of the Foundation’s 501(c)(3) status, these donations are tax-exempt for the giver.

13. Many of the Foundation’s donors prefer to keep their donations private. Their reasons for preferring to remain private range from simple modesty to fear of harassment by groups and individuals who oppose the Foundation’s mission and activities.

14. The primary purpose of the Foundation is to engage in research and communication about public issues. These issues range from the economy, to healthcare, to tax

policy. The Foundation engages with these and other issues on both the state and municipal levels.

15. For example, in May 2017, voters in Santa Fe were asked to consider whether the City should adopt a “soda tax”—an additional \$0.02 per-ounce tax on sugary beverages. The tax would apply not only to actual soda, but to any beverage that is sweetened by sugar, including sports drinks, iced tea, juice boxes, and even sweetened coffee drinks. The tax would be adopted via Santa Fe Municipal Ordinance 2017-4, the “Sugar-Sweetened Beverage Tax Ordinance.”

16. The Foundation believed the proposed soda tax was a bad idea, and therefore decided to communicate with Santa Fe voters about the issue.

17. Unlike most municipal ordinances, a soda tax cannot be adopted by a city through its city council. It must instead be adopted by a city’s voters using a ballot-initiative process. Thus, Santa Fe voters would decide whether the City should adopt the Sugar-Sweetened Beverage Tax Ordinance during a municipal election on May 2, 2017.

18. On April 6, 2017, the Foundation issued a press release announcing “Rio Grande Foundation Launches ‘No Way Santa Fe’ Initiative to Raise Awareness of Damaging Beverage Taxes.”

19. In the month leading up to the election, the Rio Grande Foundation regularly provided information about the soda tax to Santa Fe voters. It did this primarily using Facebook and other forms of social media. The Foundation directed people to a website, www.NoWaySantaFe.com, and an associated YouTube video that explained the tax to voters. The Foundation, the website, and the video all sought to educate voters about the negative aspects of the proposed soda tax.

20. The Foundation did not pay any money for the website or video.

The City's Enforcement Actions Over the Foundation's Communications

21. The Foundation's news release, Facebook posts, and other communications about the soda tax quickly drew the City's attention.

22. On April 6, 2017—the same day the Foundation announced its anti-soda tax initiative—Santa Fe Assistant City Attorney Zachary Shandler sent a letter to Foundation President Paul Gessing. In the letter, the City noted that “[b]ased on information in your press release [about the soda tax], it appears your organization has spent more than \$250, on broadcast advertisements referring to a ballot proposition, which have reached more than 100 eligible voters. If so, your organization must file a campaign statement. ... If you disagree, please contact the City Clerk's office immediately *in writing* to explain why you believe your organization is exempt from Section 9-2.6.” (Emphasis in original.)

23. Prior to being contacted by the City Attorney, the Foundation spent approximately \$1,500 to print postcards about the soda tax. These postcards were to be sent to Santa Fe voters. After being contacted by the City and informed about the donor-disclosure requirements if it spent more than \$250 to communicate with voters, the Foundation refrained from sending these postcards. They remain unused and are now worthless.

24. A citizen complaint was filed one day later, on April 7, 2017, by Santa Fe resident Edward T. Stein, with the Ethics and Campaign Review Board. The complaint alleged that the Foundation violated the “Election and Political Campaign Codes. Specifically, with regard to Ch. 9-2 and 9-3 of City Code.” The alleged violations occurred from “4/3/17 to the present [and] all times therein.”

25. That same day, on April 7, 2017, Foundation President Paul Gessing responded by letter to the City Attorney, informing the City that an initial review indicated that the Foundation had not spent more than \$250 to communicate about the soda tax, and was therefore not required to disclose its donors to the city.

26. On April 10, 2017, the Santa Fe City Clerk formally notified the Foundation about Mr. Stein's April 7 complaint. The letter informed the Foundation that "you have ten (10) business days to file a sworn written response; however, the [Ethics and Campaign Review] Board has a previously scheduled meeting at 3:30 p.m. on April 19, 2017 and you have the option of submitting your response on or before this date for submittal at the meeting."

27. Notwithstanding the City's invitation to submit the Foundation's response early, the formal response was actually not due until April 24, 2017.

28. On April 13, 2017, Edward Stein filed an "Amendment to Complaint Form." This amendment to Mr. Stein's April 7 complaint alleged that the Rio Grande Foundation continued to violate the relevant ordinances, and went on to specifically list the "No Way Santa Fe" website and video. "The charged party or parties have continued to violate Santa Fe's election code by trying to influence the soda tax election without filing the proper papers."

29. On April 14, 2017, Foundation President Paul Gessing submitted another letter to the City, stating that "[W]e were planning to engage in public communications that would have triggered your reporting requirements and would have done so but for the ordinance. Requiring 501c3 nonprofits to disclose their donors is a major burden and, accordingly, we are choosing not to speak rather than expose the privacy of our donors, including exposing them to potential harassment."

30. On April 20, 2017, the Foundation received yet another communication from the City. In this letter, Assistant City Attorney Zachary Shandler notified the Foundation that— notwithstanding the fact that the Foundation had refrained from engaging in further communications about the soda tax—the Board would hold a formal hearing regarding the Foundation's alleged violations of the City's campaign-finance ordinance on April 24, 2017.

31. The City of Santa Fe Ethics & Campaign Review Board is the City's department that is charged with enforcing the City Campaign Code.

32. Mr. Shandler's April 20 letter informed the Foundation that Mr. Stein "presented Complaint #2017-4/4A to the City's Ethics and Campaign Review Board" on April 19, 2017. At that meeting, Mr. Stein "presented an affidavit from Mr. Glenn Silber regarding the potential cost of the video found on the webpage 'No Way, Santa Fe.'" The Board "viewed the video" and concluded that Mr. Stein's complaint "set forth 'legally sufficient facts which, if true, show probable [cause] to believe that there was a violation' of the City Campaign Code."

33. The letter went on to inform the Foundation that the April 24 hearing would "include opening statements, witnesses, and submittal of written documents. ... At the conclusion of this hearing, the Board may vote on the matter and may dismiss the complaint or announce monetary sanctions."

Santa Fe's Donor-Disclosure Ordinance

34. At the April 24, 2017, hearing, the Board would consider the Foundation's alleged failure to comply with the City's recently adopted donor-disclosure ordinance.

35. Santa Fe City Campaign Code Section 9-2.6 ("Independently Sponsored Campaign Communications and Reporting"), adopted in 2015, is triggered when a non-profit organization:

- spends, in aggregate, more than \$250 in a single election;
- to pay for any form of public communication (print, broadcast, electronic advertising, billboards, pamphlets, signs, mailers, etc.);
- to expressly advocate for ... the approval or defeat of a ballot proposition;
- by communicating with 100 or more voters;
- within 60 days before an election.

36. Once someone triggers the ordinance, that individual or organization must file "a report of all such expenditures made and all contributions received for the purpose of paying for such expenditures." Santa Fe, N.M., City Campaign Code § 9-2.6(A).

37. The required report must include the date, amount, and method of payment of each contribution. It must also include the name, address, and occupation of the person making the contribution. *Id.*

38. The amount of money the organization spends on its speech must also be explained in detail. The report must include the date, the amount of the expenditure, the name and address of the person or entity where an expenditure was made, and the purpose of the expenditure. *Id.*

39. The ordinance also applies to groups that oppose or support individual candidates for political office. *Id.* However, since 501(c)(3) non-profits are prohibited from supporting or opposing specific candidates, and since the Foundation accordingly does not engage in these kinds of communications, the Foundation does not challenge the ordinance as it applies to speech about candidates for office.

40. Media organizations—even non-profit ones—are exempted from the reporting requirements of the ordinance. *Id.*

41. A non-profit that refuses or fails to disclose its donors is subject to penalties of up to \$500 per day. Santa Fe, N.M., City Code § 6-16.7(B)(2).

42. Similar laws have been adopted in cities and states around the country.

43. The City and Mr. Stein alleged that the Foundation had spent more than \$250 to communicate with voters about the soda tax. Specifically, they alleged that the www.NoWaySantaFe.com website and associated video cost more than \$250 to produce, thus triggering the donor-disclosure requirements.

The Hearing and Its Aftermath

44. The Foundation's formal hearing before the Board was held on April 24, 2017.

45. Foundation President Paul Gessing attended the hearing on behalf of the Foundation, together with Albuquerque attorney Colin Hunter.

46. The hearing was held in the Santa Fe City Council Chamber.

47. Mr. Stein presented first. His presentation focused on the NoWaySantaFe.com website and video. Mr. Stein presented Mr. Silber, the local videographer, as a witness. Mr. Silber testified that the video was estimated to have cost at least \$3,000 to produce. Mr. Stein argued that this exceeded the \$250 reporting threshold, and that the Foundation was therefore required to disclose its donors.

48. Even though the Foundation had not spent any money on the video or website, Mr. Stein argued that it was an in-kind donation that nevertheless triggered the City's donor-disclosure requirements.

49. After a brief presentation by Mr. Hunter on behalf of the Foundation, Mr. Gessing was called to testify. Mr. Stein asked Mr. Gessing about the provenance of the website and video. Mr. Gessing testified that the Foundation had produced neither the video nor the website, but simply directed people to these resources.

50. The hearing lasted for approximately one hour. At the hearing's conclusion, the Board went into executive session for approximately 15 minutes.

51. After the executive session, the Board issued a unanimous public reprimand of the Foundation for failing to comply with the donor-disclosure requirements because the Board deemed the website and video to be in-kind contributions to the Foundation, and those communications were deemed to have cost approximately \$3,000 to produce.

52. According to the City, in-kind contributions count toward the \$250 reporting threshold.

53. After the hearing, the Foundation filed the paperwork that the City demanded it file in order to comply with the donor-disclosure law. This paperwork included disclosure of the separate 501(c)(3) non-profit organization that produced the video and website, as well as the

identity of individual donors who funded the Facebook advertising purchased by the Foundation to educate voters about the soda tax.

The Foundation Intends to Continue Speaking About Santa Fe Ballot Propositions

54. This lawsuit seeks only prospective relief and does not challenge the City's prosecution of the Foundation over its speech about the soda tax, nor seek any relief related to that prosecution.

55. However, as it has done throughout its history, the Foundation intends to continue to speak about municipal ballot propositions that reach its mission, including those that will inevitably arise in the City of Santa Fe. This lawsuit seeks protection for speech in which the Foundation will engage in the future.

56. When the Foundation wishes to engage in speech and debate about Santa Fe ballot propositions in the future, it does not want to choose between remaining silent or disclosing the names and personal information of its donors to the government.

Injury to Plaintiff

57. Plaintiff Rio Grande Foundation intends to speak about, oppose, and support municipal ballot issues in the City of Santa Fe in the future.

58. To engage in debates about future ballot issues fully and effectively, the Foundation must be able to communicate information and opinions to voters in Santa Fe.

59. To effectively communicate its message on a given issue, the Foundation must spend more than \$250 on mailers, websites, videos, targeted advertising, and other forms of speech.

60. Santa Fe's donor-disclosure requirements for 501(c)(3) organizations substantially burden and chill the Foundation's rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution and Article II, § 17 of the New Mexico Constitution.

61. Santa Fe forces non-profit groups to choose between protecting the privacy of their donors and meaningfully participating in topics of debate that are important to those same donors.

62. Most charitable donors do not wish to have their identities disclosed to the government. They do not wish to have their names, addresses, donation amounts, and occupations made part of a publicly accessible record. The reasons for this range from simple modesty to fear of intimidation and retaliation.

63. Donors are less likely to donate money to charities if they know their identities, occupations, and donation amounts will be disclosed to the government and made publicly available.

64. Once an organization contemplates spending more than \$250 to communicate with voters about a ballot initiative, that non-profit must choose which harm it will suffer: a chilling of its speech, or a loss of privacy for its donors. No matter which path they choose, Santa Fe forces organizations like the Foundation to endure a significant harm in exchange for exercising their First Amendment rights.

65. The Foundation would like to continue engaging in public debates about Santa Fe ballot propositions. But as long as Santa Fe's donor-disclosure requirements remain in place, the Foundation will be chilled from doing so.

CONSTITUTIONAL VIOLATIONS

First Claim for Relief **(First Amendment)**

66. Plaintiff realleges and incorporates by reference all of the allegations set forth in ¶¶ 1 through 65 above.

67. The First Amendment to the U.S. Constitution provides that "Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble." The First Amendment is made applicable to the states by the Fourteenth Amendment.

68. The First Amendment prohibits the government from requiring charitable groups to disclose the identities of their donors because the government's interest in such disclosure, in the context of ballot initiatives, is *de minimus*, while the corresponding harm of such disclosure to the speech and associational rights of non-profits and their donors is great.

69. Santa Fe City Campaign Code Section 9-2.6 requires any non-profit organization that spends more than \$250 to communicate about a municipal ballot initiative, within 60 days of an election, to file "a report of all such expenditures made and all contributions received for the purpose of paying for such expenditures."

70. This report must include the date and time of each contribution, plus the name, address, and occupation of the person making the contribution.

71. Most charitable donors do not wish to have this information disclosed to the government, nor have it incorporated into a publicly available document.

72. The report must also include detailed reports of expenditures the organization made in order to speak.

73. These reporting requirements visit severe burdens on non-profits that wish to communicate about the issues of the day, in the form of reporting fees, potential \$500 per-day fines, and the exposure of private information about their donors and supporters.

74. Under Defendants' donor-disclosure requirements, every non-profit group that spends more than \$250 to communicate with voters about a ballot proposition in the City necessarily exposes the private information of its donors to public review and scrutiny.

75. As a direct and proximate result of Santa Fe City Campaign Code Section 9-2.6, the Foundation and others similarly situated have suffered and will suffer irreparable harm to their First Amendment rights to free speech and association every time they wish to speak about a municipal ballot proposition, in violation of 42 U.S.C. § 1983. The Foundation has no adequate legal, administrative, or other remedy by which to prevent or minimize this harm.

Unless Defendants are enjoined from implementing and administering Santa Fe City Campaign Code Section 9-2.6, as it relates to ballot propositions, Plaintiff Foundation and others similarly situated, will continue to suffer great and irreparable harm.

Second Claim for Relief
(New Mexico Free Speech Clause)

76. Plaintiff realleges and incorporates by reference all of the allegations set forth in ¶¶ 1 through 75 above.

77. Article II, §17 of the New Mexico Constitution provides that “[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.”

78. As a direct and proximate result of Santa Fe City Campaign Code Section 9-2.6, the Foundation and others similarly situated have suffered and will suffer irreparable harm to their rights under Article II, §17 of the New Mexico Constitution. The Foundation has no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and administering Santa Fe City Campaign Code Section 9-2.6, as it relates to ballot measures, Plaintiff Foundation and others similarly situated will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

1. For entry of judgment declaring that Section 9-2.6 of the Santa Fe City Code is unconstitutional, facially and as-applied, as it relates to speech about the approval or defeat of a ballot proposition;

2. For entry of a permanent injunction against Defendants prohibiting them from administering Santa Fe City Campaign Code Section 9-2.6 as it relates to speech about municipal ballot propositions;

3. For an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988(b); and,
4. For such further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 26th day of July, 2017 by:

/s/ Colin L. Hunter

**Matthew R. Miller*

**Jonathan Riches*

**Scharf-Norton Center for Constitutional Litigation
at the GOLDWATER INSTITUTE**

Colin L. Hunter

Jordy L. Stern

BARNETT LAW FIRM

Attorneys for Plaintiff

**Motion for admission pro hac vice pending.*

CIVIL COVER SHEET

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Rio Grande Foundation

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew R. Miller, Jonathan Riches, Goldwater Institute, 500 E. Coronado Rd., Phoenix, AZ 85004, (602) 462-5000; Colin L. Hunter, Jordy L. Stern, Barnett Law Firm, 1905 Wyoming Blvd. NE, Albuquerque, NM 87112 (505) 275-3200

DEFENDANTS

City of Santa Fe, New Mexico; and City of Santa Fe Ethics and Campaign Review Board

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF 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	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☒ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

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 - Transfer ☐ 8 Multidistrict Litigation - Direct File

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:

Declaratory judgment action to have municipal ordinance declared unconstitutional

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

July 26, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.