

FILED  
MAR 08 2012

MISSOURI CIRCUIT COURT  
TWENTY-THIRD JUDICIAL CIRCUIT  
JEFFERSON COUNTY

HOWARD WAGNER  
CIRCUIT CLERK

Jim Lamprecht,

Plaintiff,

v.

Tiara at the Abbey Homeowners Association,

SERVE: William J. Hutchings, Jr.

110 Saint Benedict

Pevely, Missouri 63070-1659,

Defendant.

Cause No. 12JECC00027

**PETITION FOR INJUNCTIVE RELIEF,  
DECLARATORY RELIEF, AND NOMINAL DAMAGES**

Plaintiff Jim Lamprecht brings this action against Defendant Tiara at the Abbey

Homeowners Association and alleges as follows:

**INTRODUCTION**

1. Plaintiff Jim Lamprecht wishes to engage in political speech by placing yard signs advocating for political candidates and issues in his yard. When he has done so in the past, he has been contacted by a Trustee of Defendant Tiara at the Abbey Homeowners Association and informed that he was violating a covenant that forbids most signs, with a few commercial exceptions. Through MO. REV. STAT. § 478.070, the State of Missouri has made the coercive power of government available to Defendants so that they may censor political speech.

2. Defendant Tiara at the Abbey Homeowners Association has chosen to enforce this restriction against Lamprecht's political signs, but not against non-political signs that violate the covenant.

### **PARTIES**

3. Lamprecht owns a home located in Pevely, Jefferson County, Missouri, which is subject to Defendant's covenants.

4. Defendant is an association of homeowners, which has the authority to enforce its covenants, has enforced the covenant challenged here, and, by MO. REV. STAT. § 478.070, may obtain an injunction to enforce the challenged covenant. Defendant has the power to sue or be sued under Mo. R. Civ. P. 52.10.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to the Missouri Declaratory Judgment Act. MO. REV. STAT. § 527.010 *et seq.*

6. Venue is proper in this court pursuant to MO. REV. STAT. § 508.010 because both Lamprecht and Defendant are located in Jefferson County.

### **FACTUAL ALLEGATIONS**

7. On or about April 2, 2011, Lamprecht placed a political sign in his front yard that read "Alderman Ward I Glenn 'Ed' Ziegelmeyer."

8. On or about April 5, 2011, Lamprecht received a phone call from a Trustee of Defendant notifying Lamprecht that he was violating the Defendant's covenants, which mandate: "No sign of any kind shall be displayed to the public view."

9. The covenants make limited exceptions for some commercial signs, specifically:

a) The covenants permit “one sign of not more than five (5) square feet advertising the property for sale.”

b) The covenants permit “signs used by a builder or remodeler to advertise the property during the construction or remodeling period, respectively.”

10. The covenants also give Trustees of Defendant the power to enforce restrictions by levying fines and taking legal action.

11. In response to the notification that he was in violation of the covenant, Lamprecht removed the political sign from his yard on or about April 5, 2011.

12. Lamprecht removed his sign because he feared imposition of a fine or the initiation of legal action against him.

13. Lamprecht would express support for candidates and issues presently and in the future with political yard signs, but for his fear of the imposition of a fine or the initiation of legal action against him.

14. Defendant has allowed the display of non-political signs that violated the covenants, including allowing more than one realtor sign and allowing security signs.

15. Defendant has refused to change its covenants to allow political signs.

16. Defendant has refused to agree to refrain from enforcing the covenant against political signs.

17. MO. REV. STAT. § 478.070 authorizes Defendant to bring suit to obtain an injunction to enforce its covenant.

18. Pursuant to the covenants, if Defendant is required to bring suit to enforce the challenged covenant against political speech, the individual whose speech is enjoined or his property must bear the costs of the suit.

**COUNT I**  
**Violation of MO. CONST. ART. I, § 8**

19. Plaintiff incorporates herein by reference the allegations made in Paragraphs 1 through 18 of this Petition.

20. MO. CONST. ART. 1 § 8 provides in relevant part that: “[N]o law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty[.]”

21. Because of the enforcement mechanisms available to Defendant, the covenant prohibiting political yard signs has the force of law.

22. MO. REV. STAT. § 478.070 makes available to Defendant the coercive power of the government to enforce Defendant’s censorship of political speech.

23. In addition, the threat of judicial enforcement of the covenant prohibiting political yard signs constitutes state action.

24. The covenant prohibiting political yard signs is a content-based restriction on speech that places greater restrictions on Lamprecht’s political speech than on other types of speech.

25. The content-based restriction on political speech serves no compelling interest.

26. To the extent the restriction serves a compelling interest, the covenant is not narrowly tailored to serve that interest.

**COUNT II**  
**Violation of MO. CONST. ART. I, § 2**

27. Plaintiff incorporates herein by reference the allegations made in Paragraphs 1 through 26 of this Petition.

28. MO. CONST. ART. I, § 2 provides in relevant part “that all persons are created equal and are entitled to equal rights and opportunity under the law[.]”

29. The right to engage in political speech is a fundamental liberty interest under the state constitution.

30. By allowing some types of non-political speech that are prohibited under the covenants to continue unabated and without enforcement while continuing to enforce the restriction on political speech, Defendant denies Lamprecht equal protection.

31. MO. REV. STAT. § 478.070 makes available to Defendant the coercive power of the government to enforce Defendant’s denial of equal protection.

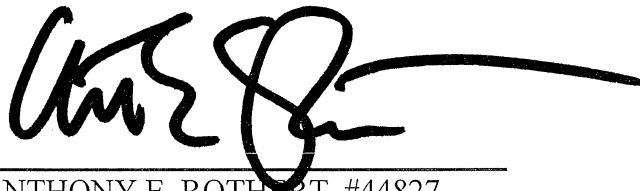
**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays this Court:

- 1) Enter declaratory judgment that enforcement of the covenant prohibiting political yard signs to be in violation of the Missouri Constitution;
- 2) Enter declaratory judgment that MO. REV. STAT. § 478.070 violates the Missouri Constitution as applied when it makes available to Defendant the coercive power of the government to enforce Defendant’s covenants restricting political speech;
- 3) Issue appropriate preliminary and permanent injunctions to prevent the future deprivation of Plaintiff’s constitutional rights;

- 4) Award to Plaintiff nominal damages for the deprivation of his constitutional rights during the period in which his constitutionally protected speech was chilled;
- 5) Award Plaintiff's costs, including reasonable attorneys' fees; and
- 6) Allow such other and further relief to which Plaintiff might be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony E. Rothert', with a long horizontal flourish extending to the right.

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