

MARGARET J. MULLEN

STATE OF ILLINOIS
IN THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED
FEB 16 2016

Keith Bin
CIRCUIT CLERK

ROBERT J. GILLEGERTEN and)
BRADLEY J. LEVY,)
)
Plaintiffs,)
)
v.)
)
VILLAGE OF LINCOLNSHIRE,)
a Municipal Corporation,)
)
Defendant.)

Case No. 16 MR 325
Jury Demand

COMPLAINT

Plaintiffs Robert J. Gillengerten and Bradley J. Levy, for their Complaint against the Village of Lincolnshire for the Village Board of Trustee’s violations of the Illinois Open Meetings Act and Article 1, Section 4, of the Illinois Constitution, allege as follows:

COUNT I – THE VILLAGE BOARD’S RULES FOR PUBLIC COMMENT VIOLATE THE ILLINOIS OPEN MEETINGS ACT

1. This is an action against the Village of Lincolnshire (“Village”) for the Village Board of Trustees’ (“Village Board”) violations of the Illinois Open Meetings Act (5 ILCS 120) and Article 1, Section 4 of the Constitution of the State of Illinois. This action arises from the Village Board’s improper adoption of content-based public comment rules and its denial of the public’s ability to address the Village Board during its December 14, 2015 Village Board meeting in violation of the Illinois Open Meetings Act and Constitution of the State of Illinois. The Plaintiffs seek declaratory relief, injunctive relief, and attorneys’ fees and costs.

THE PARTIES

2. Plaintiff Robert J. Gillengerten (“Gillengerten”) is a citizen of the State of Illinois and resides in Antioch, Lake County, Illinois. Plaintiff Gillengerten is a retired heavy equipment operator and has been a member of the International Union of Operating Engineers, Local 150, AFL-CIO (“Local 150”) for approximately 42 years.

3. Plaintiff Bradley J. Levy (“Levy”) is a citizen of the State of Illinois and resides in Berwyn, Cook County, Illinois. At all relevant times to this action, Plaintiff Levy was employed by the Lincolnshire Marriott Resort as a Musician. Plaintiff Levy is a Board Member of the Chicago Federation of Musicians (American Federation of Musicians, Local 10-208).

4. At all times relevant to this action, Defendant Village of Lincolnshire was a municipal corporation and unit of local government under the laws of the State of Illinois. The Lincolnshire Village Board of Trustees and Mayor were the corporate authority for the Village of Lincolnshire and a public body under the laws of the State of Illinois. Six Trustees and the Mayor sit on the Village Board.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this controversy because it is between citizens and a municipal corporation and public body of the State of Illinois. Venue is proper in the 19th Judicial Circuit in Lake County pursuant to 735 ILCS 5/2-103(a) and 5 ILCS 120/3(a) because it is the circuit court for the judicial circuit in which the violations of the Illinois Open Meetings Act and Constitution of the State of Illinois occurred, where the affected municipal corporation has its principal office, and where the affected public body has its principal office.

ALLEGATIONS OF FACT

6. On or about November 5, 2015, Village Mayor Elizabeth Brandt informed the Village Manager that she wanted to include a Village “Right-to-Work” Ordinance on the Village Board meeting agenda for discussion.

7. On or about November 23, 2015, Mayor Brandt filed a Request for Board Action with the Village Board requesting that it consider and discuss a Village “Right-to-Work” Ordinance titled an Ordinance on Economic Development and Worker Empowerment by Regulation of Involuntary Payroll Deductions for Private Sector Workers in the Village of Lincolnshire (“Ordinance”).

8. During the November 23, 2015 Village Board meeting, the Mayor presented her request to the Village Board and the Village Board agreed to place the Ordinance on the Consent Agenda for approval at the December 14, 2015 Village Board meeting.

9. As of November 23, 2015, the Village had no rules regarding members of the public making comment during Village Board meetings.

10. On November 29, 2015, Counsel for the Village, Adam Simon, wrote an email to the Village Manager regarding the discussion of the Ordinance on December 14, 2015, and stated that he was concerned “the trustees don’t know to expect a mob for public comment, and since you don’t have rules governing public comment everyone will get to speak.”

11. On December 4, 2015, the Village Manager sent “proposed public comment rules” to the Village Trustees for review. In this email, the Village Manager wrote:

In preparation for the December 14, 2015 Village Board meeting, Mayor Brandt, Attorney Simon and I discussed establishing Rules for Public Comment for use during the Regular Village Board meeting. ... Given inquiries received to date, staff anticipates there may be a significant number of people in attendance on 12/14/2015 who wish to provide comment to the Board on the proposed “Ordinance on Economic Development and Worker Empowerment by Regulation of

Involuntary Payroll Deductions for Private Sector Workers in the Village of Lincolnshire.”

...Once Village Board consensus is received on the proposed rules, final copies will be distributed. Additionally, the Village Board will be asked to formally adopt such rules at the December 14, 2015 meeting prior to reaching the public comment portion of the agenda.

12. On December 8, 2015, the Village Manager sent a follow-up email on the “proposed public comment rules” to the Village Trustees. In this email, the Village Manager wrote:

To date, I have only received feedback from three Trustees regarding the proposed public comment rules. Given the number of people expected to be in attendance at next Monday’s Village Board meeting, it will be important for the Village Board to consider and have such public comment rules in place to facilitate the meeting.

13. The proposed Public Comment Rules set for approval on December 14, 2015, included the following provisions, among others:

- a. Speakers are required to state their name and whether they are a resident;
- b. Each speaker is limited to only one opportunity to speak, unless the Mayor grants an exception based on the content’s importance to an agenda item;
- c. Each speaker is limited to two minutes of public comment;
- d. The total time for public comment is limited to 30 minutes, unless the Board waives the rule;
- e. The Board will make an effort to ensure an equal time for comments in favor and against an issue.

14. On December 14, 2015, approximately 400 members of the public arrived at the Village to attend the meeting. Upon information and belief, approximately one dozen members of the public in attendance were in favor of the Ordinance and the remainder opposed to the Ordinance.

15. Shortly after the meeting began, the Village Board adopted the proposed Public Comment Rules.

16. The Illinois Open Meetings Act allows public bodies to adopt public comment rules, but the Courts and Public Access Counselor require those rules to be content-neutral and contain only reasonable time, place, and manner restrictions.

17. The Public Comment Rules adopted by the Village are a *per se* violation of the Illinois Open Meetings Act because they explicitly allow for content-based exceptions to be granted at the sole discretion of the Mayor and Village Board.

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

- A. Declare that the Village of Lincolnshire violated the Illinois Open Meetings Act;
- B. Order the Village of Lincolnshire to rescind its unlawful Public Comment Rules;
- C. Grant an injunction prohibiting the Village of Lincolnshire from committing future violations of the Illinois Open Meetings Act;
- D. Award costs and fees to the Plaintiff; and,
- E. Award such other and further relief as this Court may consider proper.

**COUNT II – THE VILLAGE BOARD VIOLATED THE
ILLINOIS OPEN MEETINGS ACT BY ADOPTING RULES TO LIMIT
PUBLIC COMMENT ON THE ORDINANCE**

1-17. Plaintiffs restate and re-allege paragraphs 1-17 of Count I as paragraphs 1-17 of Count II of this Complaint.

18. The Village adopted the proposed Public Comment Rules specifically to limit public comment on the Ordinance at the December 14, 2015 meeting and has never applied these Public Comment Rules to any other topic at any other meeting.

19. Accordingly, the Public Comment Rules, as applied, violated the Illinois Open Meetings Act because they were content-based.

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

- A. Declare that the Village of Lincolnshire violated the Illinois Open Meetings Act;

- B. Order the Village of Lincolnshire to rescind its unlawful Public Comment Rules;
- C. Grant an injunction prohibiting the Village of Lincolnshire from committing future violations of the Illinois Open Meetings Act;
- D. Award costs and fees to the Plaintiff; and,
- E. Award such other and further relief as this Court may consider proper.

COUNT III – THE VILLAGE BOARD VIOLATED THE ILLINOIS OPEN MEETINGS ACT DURING THE PUBLIC COMMENT PERIOD OF ITS MEETING

1-19. Plaintiffs restate and re-allege paragraphs 1-19 of Counts I-II as paragraphs 1-19 of Count III of this Complaint.

20. When the public comment period of the December 14, 2015 meeting began, the Mayor stated that the public comment period would be limited to 30 minutes.

21. One of the Trustees requested the public comment period be extended to one hour. Another Trustee made a motion to extend the public comment period to one hour, and the motion was seconded by another Trustee who suggested 30 minutes of public comment period be allowed for each side of the Ordinance. The motion passed unanimously.

22. The Mayor then reiterated the one-hour time limit for public comment and reviewed the remainder of its newly adopted rules, including that each person would be limited to two minutes of public comment, and noted that an effort would be made to ensure an equal amount of time for both sides of the issue.

23. The Mayor started the public comment period by selecting a member of the public who identified himself as being in support of the Ordinance. After his two minutes expired, the Mayor selected another member of the audience who identified himself as being against the Ordinance. This back-and-forth selection continued through six speakers (three in support and three against), and then no other members of the public identified themselves as supporting the

Ordinance. At this point, the meeting was approximately twelve minutes into the one-hour public comment period.

24. The Mayor continued to solicit a member of the public to speak in support of the Ordinance in between each member of the public who spoke against it, but there were none. This resulted in eleven consecutive members of the public speaking against the Ordinance.

25. After the fourteenth member of the public spoke against the Ordinance, the Mayor stated that the maximum number of speakers against the Ordinance had been reached. After several members of the audience shouted that only fourteen people were able to speak against the Ordinance, the Mayor continued to solicit speakers for public comment.

26. After the fifteenth member of the public spoke against the Ordinance, the Mayor stated that the maximum number of speakers against the Ordinance had been reached. The Mayor then asked if anyone wanted to speak in support of the Ordinance, and, if not, the Board would move forward with the remainder of its agenda. At this point, the meeting was approximately thirty-six minutes into the one-hour public comment period and dozens of speakers, including Plaintiffs Gillengerten and Levy, still wished to make public comment against the Ordinance.

27. After the Mayor's announcement, a final speaker in support of the Ordinance made public comment to the Village Board. After this speaker concluded, the Mayor once again stated the public comment period was concluded, unless someone wanted to speak in support of the Ordinance. Again, there were dozens of speakers, including Plaintiffs Gillengerten and Levy, who had their hands raised and still wished to make public comment against the Ordinance. This was approximately thirty-eight minutes into the one hour public comment period.

28. A final speaker stated that he wished to provide his position as a small business owner, and was given permission to speak. He spoke against the Ordinance and then the Mayor

ended the public comment period approximately forty minutes into the one-hour public comment period.

29. The Mayor ended the public comment period early despite the fact that dozens of speakers, including Plaintiffs Gillengerten and Levy, had their hands raised and still wished to make public comment against the Ordinance.

30. As a direct and proximate result of the Village Board's content-based application of its content-based Public Comment Rules, the Village Board violated the Open Meetings Act. Plaintiffs and the citizens of Illinois have been deprived of their right and opportunity to be heard on the Ordinance.

31. The Village's Public Comment Rules and their application are not reasonable content-neutral rules to govern decorum or procedure.

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

- A. Declare that the Village of Lincolnshire violated the Illinois Open Meetings Act;
- B. Order the Village of Lincolnshire to rescind its unlawful Public Comment Rules;
- C. Grant an injunction prohibiting the Village of Lincolnshire from committing future violations of the Illinois Open Meetings Act;
- D. Award costs and fees to the Plaintiff; and,
- E. Award such other and further relief as this Court may consider proper.

**COUNT IV – THE VILLAGE BOARD'S VIOLATION OF ARTICLE 1, SECTION 4, OF
THE CONSTITUTION OF THE STATE OF ILLINOIS**

1-31. Plaintiffs restate and re-allege paragraphs 1-31 of Counts I-III as paragraphs 1-31 of Count IV of this Complaint.

32. The Village Board's content-based Public Comment Rules violate Article I, Section 4, of the Constitution of the State of Illinois by discriminating against members of the public

because of the content of their speech, when adopted, on its face, and as applied during the December 14, 2015 meeting.

33. The Village does not possess a compelling, important, or rational justification for adopting and applying its content-based Rules, which prohibit speakers from making public comment who express one view, while allowing speakers with opposing views to continue to address the Village Board; allow individuals to speak multiple times at a meeting based on the content of their speech; and allow for longer public comment period based on the content of speech.

34. The Village's content-based Rules and application are more expansive than necessary and not narrowly tailored to govern decorum or procedure, or any other significant governmental interest.

WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

- A. Declare that the Village of Lincolnshire has violated the Article 1, Section 4, of the Constitution of the State of Illinois;
- B. Order the Village of Lincolnshire to rescind its unconstitutional Public Comment Rules;
- C. Grant an injunction prohibiting the Village of Lincolnshire from committing future violations of the Constitution of the State of Illinois;
- D. Award costs and fees to the Plaintiff; and,
- E. Award such other and further relief as this Court may consider proper.

Dated: February 11, 2016

Respectfully submitted,

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

By: 

One of the Attorneys for Plaintiffs

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