

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LIA Network, Terri Hall, and Rachel Vickers,

Plaintiffs,

v.

City of Kerrville, Texas.

Defendant

Civil Action No. 5:24-CV-00403

Original Complaint For Declaratory and Injunctive Relief

Plaintiffs LIA Network, Terri Hall, and Rachel Vickers bring this civil action against the City of Kerrville, Texas, and allege as follows:

Introduction

1. Something is rotten in the hill country. Government officials holding office in the City of Kerrville have decided that when political expediency and the commands of the First Amendment conflict, political expediency wins out.

2. In response to grassroots victories in primary elections and in anticipation of early voting and election day on May 4, 2024, the city council of Kerrville has decided to engage in a scheme to protect incumbents by making the price of participating in civic matters too costly and burdensome. The City of Kerrville has in its crosshairs citizens who pass out political literature to

fellow citizens on sidewalks, citizens who hold signs in support of candidates near a polling place¹, and citizens who knock on the doors of their fellow community members to speak about issues of civic importance outside of hours specified by the city.

3. This case involves ordinances that the City of Kerrville has recently passed that flagrantly violate the First Amendment of the United States Constitution, including criminalizing the passing out of political and religious pamphlets on public sidewalks. “Content-based laws—those that target speech based on its communicative content—are **presumptively unconstitutional** and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (emphasis added).

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. § 1331 and 1343. This civil action arises under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Defendant resides in this district and a substantial part of the events giving rise to this claim occurred in this district.

¹ More precisely, the City targets groups of citizens who hold signs near each other. Four citizens holding signs together is perfectly acceptable, but five citizens holding signs in support of a candidate is a bridge too far.

Parties

6. Plaintiff LIA Network (which operates as We the People - Liberty in Action and is hereinafter referred to as “Liberty in Action”) is a grassroots nonprofit organization located in Kerrville Texas.

7. Plaintiff Terri Hall is an individual residing in Kerr County, Texas.

8. Plaintiff Rachel Vickers is an individual residing in Kerr County Texas.

9. Defendant City of Kerrville, Texas is a municipality located in Kerr County, Texas.

Statement of Facts

Ordinance No. 2024-03, the Peddlers and Solicitors Ordinance

10. On March 26, 2024, the Kerrville City Council passed Ordinance No. 2024-03, (the Peddlers and Solicitors Ordinance) which amends and replaces Chapter 78 (“Peddlers and Solicitors”) of Kerrville’s Code of Ordinances. A true and correct copy of Ordinance No. 2024-03 is attached and incorporated herein as Exhibit 1.

The Permitting Provision (Sec. 30-182)

11. Section 30-182 of the ordinance states:

It is unlawful for any person to engage in peddling or solicitation activities within the City without first obtaining a permit issued by the city manager.

Canvassers and peddlers or solicitors “currently licensed by the state to engage in the activity” are exempted from this requirement.

12. The ordinance defines a “canvasser” as “a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of (1) attempting to **enlist support for or against a particular religion, philosophy, ideology, political party, issue, or candidate**, even if incidental to such

purpose the canvasser accepts the donation for money for or against such cause; or (2) distributing a handbill or flyer advertising a non-commercial event or service.” (Sec. 30-178) (emphasis added).

13. The ordinance defines “*peddle and any form of the word*” as “all activities ordinarily performed by a peddler.” In turn, it defines a peddler as “a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of attempting to sell goods, merchandise, wares, or other personal property of any nature or service.” (Sec. 30-178).

14. The ordinance defines “*Solicitation, soliciting, solicited, or any form of the word solicit*” as “any activities ordinarily performed by a solicitor.” In turn, it defines solicitor as “means any person who goes upon the premises of any residence in the City, not having been invited by the occupant thereof for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery, or for services to be performed in the future. **This definition includes any person who, without invitation, goes upon the premises of any residence in the City to request a contribution of funds or anything of value, or sell goods or services for educational, political, charitable, religious, or other non-commercial purposes.**” (Sec. 30-178) (emphasis added).

15. An application for a permit required by Section 30-182 of the ordinance must be made in writing, must include government issued identification, must describe the activity to be conducted, and include a nonrefundable fee. (Sec. 30-186, Sec 30-188). The City Council has set the proposed fee at \$86.00. A true and correct copy of Ordinance No. 2024-07, which ratifies this proposed fee is attached and incorporated herein as Exhibit 2.

16. Even those exempted from the ordinance appear to be required to file an application as the ordinance requires an application and “Proof of status necessary to receive an exception under Sections 30-182 or 30-189 of this article.” (Sec. 30-186 (5)).

17. The ordinance then requires applicants be fingerprinted by the police department and for the police department to perform a background check on the applicant, with a background check being required every time an applicant applies for a permit and fingerprinting being required every calendar year. (Sec. 30-187). It authorizes police to “investigate the affairs of any person peddling or soliciting in violation of this article.”(Sec. 30-187 (b)) A permit issued by the city lasts for 90 days. (Sec. 30-190).

18. The City shall issue a permit within 10 business days of receiving an “administratively complete” application unless (1) the applicant is convicted of a felony or misdemeanor that “relates to the conduct of a business or results from an assault against a person”; (2) the applicant falsified information on the application; or (3) the applicant is a sex offender. (Sec. 30-190, Sec. 30-194).

19. On the back-end, the ordinance gives “any official other than the City Manager” the following bases to revoke a permit

- a. Fraud, misrepresentation, or false statement contained in the application for permit;
- b. Fraud, misrepresentation, or false statement made in the course of carrying out business or other activities;
- c. Any violation of this article;
- d. Conviction of a misdemeanor or any felony if the crime directly relates to the conduct of business; or

- e. Conducting the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, and general welfare of the public.

(Sec. 30-195).

20. If a permit is denied or revoked, the ordinance provides that the City Manager is the sole decisionmaker for the appeal of such a decision, and provides that “the decision and order of the City Manager on such appeal is final and conclusive.” (Sec. 30-196).

Hours Provision (Sec. 30-179).

21. The ordinance makes it unlawful for both permit-holders and those exempt from the permit requirement to “peddle, solicit **or canvass** at residences between the hours of 8:00 p.m. and 8:00 a.m.” without “permission . . . posted” or “express, prior invitation” by the property owner or person residing there. (Sec. 30-179) (emphasis added).

Signs Provision (Sec. 30-180).

22. The ordinance makes it unlawful “for any person to peddle, solicit, **or canvass** upon any private property in the City where the owner, occupant, or person legally in charge of the premises has posted at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words ‘No Solicitors’, ‘No Trespassing’, or words of similar intent.” (Sec. 30-180) (emphasis added).

Public Property Provision (Sec. 30-183).

23. The ordinance makes it unlawful for “**any person** to peddle, hawk, sell, **solicit, distribute,** or take orders for any services, wares, **merchandise, or goods,** including **magazines,** encyclopedias, tools, **photographs,** flowers, candy, or plants **on the streets, street rights-of-way, or medians of the City.** This prohibition shall apply to and **include any institution or group**

organized for a political, religious, or charitable purpose, or individuals engaging in such activities on behalf of any such institution or group.” (Sec. 30-183) (emphasis added). But the City does give itself (via the City Manager or “other public entities”) the power to grant vendors an exception in the “City’s parks and recreational areas.” (Sec. 30-183 (c)).

Fines for Violation of the Peddlers and Solicitors Ordinance (Sec. 30-186).

24. Any “person, firm, partnership, corporation, association, agent, or employee” that violates the ordinance is guilty of a misdemeanor and is to be fined at a minimum of \$50 per offense and at a maximum of \$500 per offense, with each hour that a violation occurs being counted as a separate offense. (Sec. 30-186 (a)). The mens rea of the offense is specifically negated, making any violation of the ordinance a strict liability offense. (Sec. 30-186 (b)).

Ordinance No. 2023-20, the Electioneering Ordinance

25. On June 23, 2023, the Kerrville City Council passed Ordinance No. 2023-20 (The Electioneering Ordinance), which amends Chapter 70 (“Offenses and Miscellaneous”) of Kerrville’s Code of Ordinances. A true and correct copy of Ordinance No. 2023-20 is attached and incorporated herein as Exhibit 3.

26. The City of Kerrville uses the Kathleen C. Cailloux City Center for the Performing Arts as its polling location for most City elections. (See the preamble of the Electioneering Ordinance).

27. The Electioneering Ordinance prefaces that all of its regulations in section one “apply to electioneering at a polling place during a voting period.” ((Sec. 70-43 (a)).

28. The ordinance states that “no more than ten (10) signs regarding a candidate, measure, or political party may be used, placed or erected at the polling place, to include signs affixed to vehicles, which the owner or operator shall remain on the premises. (Sec. 70-43 (a)(9)).

29. It further specifies that “**Out of the ten (10) signs referenced above, no more than 4 (four) signs may be held by any person(s).**” (Sec. 70-43 (a)(11)) (emphasis added).

30. The ordinance also bans electioneering on driveways at polling places but allows for “candidates and supporters of a measure” to electioneer at “one (1) tent or temporary shade structure within an area designated by the City Manager for electioneering.” The further restriction is placed that the designated area must be “beyond 240 feet from an outside door through which a voter may enter a building in which a polling place is located.” (Sec. 70-43 (a)(2)). This contrasts with the ordinary requirement in Texas that electioneering take place only 100 feet or more from the door of a polling place. TEX. ELEC. CODE. §§ 32.075(e), 81.002.

31. The City of Kerrville has put out a map demarcating the tenting area for the Auditorium for the voting period and areas it deems permissible to electioneer for the upcoming municipal election date and early voting. The map is attached and incorporated herein as Exhibit 4.

32. The ordinance then gives the City of Kerrville the authority to exempt these regulations “to any City authorized signs, materials, or other messages on property the City owns or controls.” (Sec. 70-43 (b)).

Plaintiff Liberty in Action

33. Liberty in Action is a Texas nonprofit organization which engages in citizen advocacy.

34. As part of this mission, Liberty in Action seeks to provide voters with information about upcoming local elections including both issue and candidate elections. Liberty in action routinely engages in block walking in residential neighborhoods in Kerr county, including the City of Kerrville. Block walkers that volunteer for Liberty in Action use the opportunity to speak with citizens on issues of public importance, provide literature on issues of public importance, and ask for donations to further the goals of Liberty in Action.

35. Liberty in Action also offers voter guides to prospective voters. Liberty in Action has in the past passed out civic literature and voting guides on city sidewalks in Kerrville.

36. Past block walkers who have volunteered have informed Liberty in Action that they are unwilling to engage in prospective block walking and pamphleteering due to sections of the recently passed Canvassers and Solicitors Ordinance out of fear of being heavily fined or arrested.

Plaintiff Terri Hall

37. Terri Hall is co-founder of Liberty in Action, and a resident of Kerr County. As part of her role as director, Terri often finds herself in Kerrville acting on behalf of Liberty in Action, whether it be block walking (including handing out information on ballot propositions and candidates), pamphleteering, or working the precincts on election day or early voting days passing out voter guides, often on sidewalks.

38. Terri and her family are also active members of their church and they engage in street evangelism in Kerrville. This evangelism often involves the distribution of gospel tracts on sidewalks in Kerrville.

Plaintiff Rachel Vickers

39. Rachel Vickers is a politically engaged resident of Kerrville. She has in the past engaged in door-to-door canvassing in Kerrville, and passed out pamphlets and voter guides along the sidewalks of polling locations. She is the precinct chair for precinct 314 of the Republican Party of Kerr County. She is a small business owner of Just Windows, a window cleaning business in Kerrville.

Plaintiffs' Speech Rights are Chilled by the Ordinances

40. Liberty in Action has faced difficulties with recruiting members to volunteer for the organization's activities as a result of the passage of Ordinance 2024-3. Current and potential volunteers have told Liberty in Action they will not block walk for the organization because of the passage of Ordinance 2024-3, for fear of being fined or arrested. Indeed, because the ordinance imposes fines for "each hour" that a violation occurs, volunteers reasonably fear the imposition of fines totaling tens of thousands of dollars if they engage in activity prohibited by the Ordinance. Liberty in Action expects this reluctance will reduce the organization's effectiveness in spreading its political message.

41. Liberty in Action refuses to comply with a licensing regime prior to engaging in canvassing, soliciting, or peddling as required by Ordinance 2024-3.

42. Liberty in Action also wishes to assemble volunteers and electioneer outside of City-Controlled polling places in ways that are restricted by Ordinance 2023-20. Specifically, Liberty in Action would like to have more than five volunteers hold signs supporting particular candidates, to erect a tent for shade, and to electioneer generally in the areas more than 100 feet but less than 240 feet from the door of city-owned polling locations.

43. Liberty in Action, Terri Hall and Rachel Vickers would like to canvass, pass out election pamphlets, and speak with their fellow citizens about the upcoming city council election in Kerrville, but are chilled because of the unconstitutional and overbroad Ordinance 2024-03.

44. Rachel Vickers would like to knock on her fellow citizens' doors to solicit business for Just Windows without complying with the requirements of the permitting scheme.

45. Rachel Vickers would like to solicit customers for her business on the sidewalks of the City of Kerrville.

46. As a result of the actions of the town, Liberty in Action, Terri Hall, and Rachel Vickers are suffering irreparable harm for which there is not adequate remedy at law.

47. The city of Kerrville has at all times, acted under color of state law.

Count I— Violation of the Right to Free Speech

42 U.S.C. § 1983

Sec. 30-183 - Public Property Provision

48. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

49. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiffs must show that Defendants acted under color of state law, and Defendants' acts deprived Plaintiffs of their rights under the laws of the United States.

50. Requests for donations and pamphleteering are recognized as speech entitled to First Amendment protection.

51. The city of Kerrville's streets, sidewalks, and medians are traditional public forums.

52. The Public Property Provision is a content-based restriction on speech, as it singles out specific types of speech for differing treatment than other types of speech, and directly singles

out groups organized for the purpose of advancing core protected First Amendment viewpoints: political, religious or charitable purposes.

53. The Public Property Provision is not narrowly tailored to, nor is it the least restrictive means of serving a compelling governmental interest, and consequently violates the First Amendment.

54. In the alternative, in the unlikely scenario the Public Property Provision is deemed content neutral, it is subject to exacting scrutiny. The Public Property Provision is not narrowly tailored to serve a significant governmental interest, and does not leave open ample alternative channels of communication, and consequently violates the First Amendment.

55. The Public Property Provision is substantially overbroad when compared to its legitimate sweep.

56. The passage of the Public Property Provision was done under color of state law and has proximately caused the deprivation of Plaintiffs' First Amendment Rights.

Count II— Violation of the Right to Free Speech
42 U.S.C. § 1983
Sec. 30-179-Hours Provision

57. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

58. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiffs must show that Defendants acted under color of state law, and Defendants' acts deprived Plaintiffs of their rights under the laws of the United States.

59. The time limitations imposed on the expressive activity of Plaintiffs violates the First Amendment.

60. The Hours Provision is content based and is thus subject to strict scrutiny.

61. The Hours Provision is not narrowly tailored to, nor is it the least restrictive means of serving a compelling governmental interest, and consequently violate the First Amendment.

62. The Hours Provision is both overinclusive and underinclusive in terms of fulfilling whatever claimed compelling interest Kerrville alleges. As stated, it reaches only certain types of political, religious, and issue-oriented speech, while failing to address all other types of communications. It likewise applies using a random limit that bears no relationship with nightfall, daybreak, or public safety.

63. The city of Kerrville's restrictions on expressive conduct were adopted under color of state law and have caused the deprivation of Plaintiffs' First Amendment Rights.

Count III— Violation of the Right to Free Speech
42 U.S.C. § 1983
Sec. 30-180-Signs Provision

64. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

65. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiffs must show that Defendants acted under color of state law, and Defendants' acts deprived Plaintiffs of their rights under the laws of the United States.

66. The city of Kerrville's ban on expressive conduct if there is a sign posted at private property bearing the phrases "No Solicitors", "No Trespassing", "or words of similar intent" violates the First Amendment Rights of Plaintiffs.

67. The Signs Provision is content based and thus subject to strict scrutiny.

68. The Signs Provision is not necessary to serve a compelling state interest and is not narrowly tailored to achieve such an end.

69. The Signs Provision is not narrowly tailored to, nor is it the least restrictive means of serving a compelling governmental interest, and consequently violates the First Amendment.

70. The city of Kerrville's restrictions on expressive conduct were adopted under color of state law and have caused the deprivation of Plaintiffs' First Amendment Rights.

Count IV—Violation of the Right to Free Speech
42 U.S.C. § 1983
Sec. 30-182, 184 et. seq.—Permitting Provision

71. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

72. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiffs must show that Defendants acted under color of state law, and Defendants' acts deprived Plaintiffs of their rights under the laws of the United States.

73. The city of Kerrville's Permitting Provision is a prior restraint on First Amendment protected conduct.

74. The application procedures, including the requirements to pay an application fee, be fingerprinted by the Kerrville Police Department, the time period for a decision on a permit application, and the short period with which an issued permit is valid are substantial obstacles to exercising First Amendment rights, and serve as blatant deterrents to the exercise of those rights.

75. The application procedures are not narrowly tailored to serve a significant governmental interest, and do not leave open ample alternative channels of communication. They are substantially overbroad when compared to their legitimate sweep.

76. The permit revocation standards, which allow "any official other than the City Manager" to revoke a permit for "Conducting the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the

health, safety, and general welfare of the public,” vests unbridled discretion with the City of Kerrville to revoke permits, which violates the First Amendment.

77. The requirement that Plaintiffs must affirmatively seek an exemption to the permitting scheme before engaging in expressive activity violates the First Amendment.

78. The requirement that Plaintiffs must apply for and obtain a permit before engaging in expressive activity violates the First Amendment.

79. The requirement that Plaintiffs must pay an application fee before engaging in expressive activity violates the First Amendment.

80. The city of Kerrville’s permitting scheme does not advance a significant governmental interest.

81. The city of Kerrville’s permitting scheme purports to only allow for one appeal mechanism for a denial or revocation of a permit, namely, review by the City Manager. The ordinance states that “the decision and order of the City Manager on such appeal is final and conclusive.”

82. This is violation of the due process rights of Plaintiffs and to access the courts and substitute that for a procedurally deficient resolution mechanism.

83. The city of Kerrville’s permitting scheme was done under color of state law and has caused the deprivation of Plaintiffs’ First Amendment rights.

Count V— Violation of the Right to Free Speech
42 U.S.C. § 1983
The Electioneering Ordinance

84. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

85. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiffs must show that Defendants acted under color of state law, and Defendants' acts deprived Plaintiffs of their rights under the laws of the United States.

86. At its very outset, the Electioneering Ordinance establishes itself as a content based restriction on speech by stating that it applies "to electioneering at a polling place during the voting period." (Sec. 70-43 (a)).

87. Sec. 70-43 is not narrowly tailored to, nor is it the least restrictive means of serving a compelling governmental interest, and consequently violates the First Amendment.

88. In the alternative, in the unlikely scenario Sec. 70-43 (11) is deemed content neutral, it is subject to exacting scrutiny.

89. Sec. 70-43 is not narrowly tailored to serve a significant governmental interest, and does not leave open ample alternative channels of communication, and consequently violates the First Amendment.

90. Sec. 70-43 is substantially overbroad when compared to its legitimate sweep.

91. The city of Kerrville's adoption and enforcement of Sec. 70-43 has proximately caused the deprivation of Plaintiffs' First Amendment Rights.

Preliminary and Permanent Injunctive Relief

92. Defendant City of Kerrville's passage of the Electioneering Ordinance and the Sidewalks Provision, the Permitting Provision, the Hours Provision, and the Signs Provision of the Solicitors and Peddlers Ordinance has deprived and will continue to deprive Plaintiffs of their fundamental rights protected by the First and Fourteenth Amendments. Because of the risk of prosecution of Plaintiffs for their engaging in constitutionally protected speech and expressive

conduct, these ordinances are having a chilling effect on Plaintiffs further speech and expressive conduct. Money damages cannot adequately compensate for these constitutional injuries and, absent injunctive relief, the injuries will be irreparable. Accordingly, appropriate preliminary and permanent injunctive relief is necessary.

Bench Trial Requested

93. Plaintiffs request a bench trial on all matters submitted to a trier of fact.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Enter Judgment in favor of Plaintiffs;
- B. Declare that the Public Property Provision, the Hours Provision, the Signs Provision and the Permitting Provision of Ordinance 2024-03 violates the First Amendment of the United States Constitution, facially and/or as applied to Plaintiffs' activities.
- C. Declare that Ordinance 2023-20 violates the First Amendment of the United States Constitution, facially and/or as applied to Plaintiffs' activities.
- D. Issue preliminary and permanent injunctive relief enjoining Defendant City of Kerrville from investigating, prosecuting, or otherwise enforcing the Sidewalks Provision, the Hours Provision, the Signs Provision and the Permitting Provision of Ordinance 2024-3;
- E. Issue preliminary and permanent injunctive relief enjoining Defendant City of Kerrville from investigating, prosecuting, or otherwise enforcing Ordinance 2023-20;
- F. Award Plaintiffs nominal damages of \$1;
- G. Award Plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- H. Grant any and all other further relief to which Plaintiffs may be justly entitled.

Dated: April 17, 2024

Respectfully submitted,

THE LAW OFFICES OF TONY McDONALD

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