

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

**Hagan Realty, Inc., Matt Hagan LLC,
and Matthew Hagan,**

Court File No. 1:23-cv-278

Plaintiffs,

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

vs.

**The City of East Lansing, Michigan, a
Michigan municipality,**

Defendant.

INTRODUCTION

East Lansing, Michigan, violates a landlord's right not to speak when the city, as a matter of policy and ideology through a City Code provision, compels landlords to speak for the government by requiring them to inform and provide information to tenants about where to register to vote or to otherwise exercise that right. Here, landlords would choose to remain silent. But, if a landlord fails to comply with the City's command, it may impose civil and criminal penalties for violating the ordinance.

It is compelled speech to mandate that landlords act as couriers of the municipality's ideological messages to prospective tenants. Registering to vote is irrelevant to a tenant's decision to enter into a lease agreement with a landlord.

The First Amendment protects an individual's right to refrain from speaking just as much as it protects the right to speak freely. Where East Lansing's interest is to disseminate an ideology or policy relating to voting, no matter how acceptable to some, those interests cannot outweigh the First Amendment right to avoid being the courier of the government's

message. Therefore, the East Lansing City Code is unconstitutional and has violated landlords' First Amendment right to free speech, which in turn violates 42 U.S.C. § 1983. Not only are the plaintiff landlords entitled to at least nominal damages, but also permanent injunctive relief enjoining the city from enforcing any provision of the city code at issue.

PARTIES

Plaintiffs

1. Plaintiff Hagan Realty, Inc. is a family business organized as a closely-held property management and development corporation located in East Lansing, Michigan with an office at 927 E. Grand River Ave. Suite 11, East Lansing, Michigan 48823. It serves as the property management agent for properties owned by Matt Hagan LLC. Hagan Realty Inc. rents apartments or similar residential facilities to other persons as tenants.

2. Plaintiff Matt Hagan LLC is a single member limited liability company with Plaintiff Matthew Hagan as the LLC's single member. Matt Hagan LLC shares offices with Hagan Realty Inc. in East Lansing Michigan at 927 E. Grand River Ave. Suite 11, East Lansing, Michigan 48823. Matt Hagan LLC owns residential real property which is rented to other persons as tenants through Hagan Realty Inc.

3. Plaintiff Matthew ("Matt") Hagan is an employee of family business Hagan Realty, Inc. Hagan manages residential real property, including property owned by Matt Hagan LLC, for Hagan Realty, Inc. in East Lansing, Michigan.

Defendant City of East Lansing

4. The City of East Lansing is a Michigan municipality located in Ingham County, Michigan.

JURISDICTION

5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343 (1)–(4) and 42 U.S.C. §§ 1983, 1985(2), (3) and § 1988 (civil rights statutes) and the First Amendment of the United States Constitution.

6. This Court is authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, Federal Rules of Civil Procedure 57 and 65, and has general legal and equitable powers.

7. Venue is proper in this Court under 28 U.S.C. § 1391.

Constitutional and City Code Provisions at Issue

8. The First Amendment of the United States Constitution states that “Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

9. City of East Lansing, Michigan, Code of Ordinances, Ch. 6, Art. III Sec. 6-175, § 1006.4 is accurately quoted as follows:

Information to be provided at occupancy. At the time occupancy is given to the tenant, the owner or owner's legal agent shall provide each tenant with specific information on how to register to vote and the requirements to register, notice that election information and further registration information is available on the Secretary of State's website as well as the City's website through the City Clerk department, and a copy of the State of Michigan Voter Registration Application. The failure of an owner or owner's legal agent to do any act required by this section shall not be construed to affect the validity of the lease or the enforcement of any of the lease provisions. A violation of this section shall be deemed a civil infraction.

FACTS

Landlords as private persons, are not governmental couriers for an ideological or policy messages.

A. East Lansing can impose civil infraction penalties upon landlords for failing to provide tenants with voter registration forms or “how to” vote information.

10. Plaintiff Matt Hagan, through his individual LLC and family business Hagan Realty, Inc., is a landlord and owner of at least one apartment building in the City of East Lansing, Michigan. Buildings owned and/or managed by Plaintiffs have numerous tenants. For example, one of the apartment buildings owned by Matt Hagan LLC and managed by Hagan Realty Inc. has three apartment units with up to four occupant/tenants per unit. From time to time, tenants will move from rented properties and new tenants will rent an apartment owned by Matt Hagan LLC through Hagan Realty, Inc.

11. Mich. Comp. Laws § 554.601(b) defines Landlord as: “[T]he owner, lessor, or sublessor of the rental unit or the property of which it is a part and, in addition, means a person authorized to exercise any aspect of the management of the premises, including a person who, directly or indirectly, acts as a rental agent, receives rent, other than as a bona fide purchaser, and who has no obligation to deliver the receipts to another person.” Those who fall under the statutory definition of “Landlord”, including Plaintiffs, are identified as landlords in this complaint.

12. The City of East Lansing enacted Sec. 6-175, § 1006.4 in 2013 through passing Ordinance No. 1293 after a public hearing on February 5, 2013. It is part of the City Code governing rental housing inspection and licensing under Section 6-175. City of East Lansing

City Council, *Public Hearing 12. Consideration of Ordinance No. 1293*, at 36:07 (February 5, 2013), https://eastlansing.granicus.com/MediaPlayer.php?view_id=2&clip_id=81).

13. Plaintiff Matt Hagan spoke in opposition to Ordinance No. 1239 at the City of Lansing public hearing on the ordinance February 5, 2013.

14. East Lansing City Clerk, Marie E. McKenna, authored a memorandum dated January 31, 2013, regarding the then-proposed ordinance No. 1293. The memorandum identified the policy or ideology or both of the City of East Lansing's purpose of Sec. 6-175, § 1006.4. McKenna wrote that: "As the appointed City Clerk, I strongly support any effort to register students both on and off campus and value the many partnerships that enable this objective to be achieved." **Exhibit 1** (Memo. Marie K. McKenna, East Lansing City Clerk (Jan. 31, 2013)).

15. City Clerk McKenna also identified the policy or ideology supporting the enactment of Sec. 6-175 § 1006.4: "It is my hope that an initiative such as this would help students to be more engaged and invested in our community." *Id.*

16. East Lansing City Code, Sec. 6-175 § 1006.4 is entitled "*Information to be provided at occupancy.*"

17. East Lansing code provisions require landlords to provide certain information to potential tenants or tenants specifically related to the dwelling unit and building. For example, under East Lansing's City Code, Sec. 6-175 § 1006.3, there are required lease clauses for "maximum occupancy;" "payment of utility charges, routine maintenance, including but not limited to lawn care, rubbish storage and disposal, garbage storage and disposal, litter,

servicing of owner-supplied facilities;” “periodic inspection of any rental unit;” and items such as “parking instructions.” *See* Sec. 6-175 § 1006.3

18. In addition, East Lansing City Code Sec. 6-175, § 1006.4 mandates Matt Hagan, as a landlord, to provide a tenant with a voter registration application at the time the tenant takes possession of the residence. That mandate from Sec. 6-175, § 1006.4 is accurately quoted as follows:

“[T]he owner or owner's legal agent shall provide each tenant with specific information on how to register to vote and the requirements to register... and a copy of the State of Michigan Voter Registration Application”

Sec. 6-175, § 1006.4.

19. The City Code provisions also identifies the source for election information and voter registration: which is accurately quoted in-part as follows:

“[N]otice that election information and further registration information is available on the Secretary of State's website as well as the City's website through the City Clerk department.”

Sec. 6-175, § 1006.4.

20. The City of East Lansing provides a State of Michigan Voter Application Form,¹ (Exhibit 2) form and “One Pager Plus: Voter (Student) FAQs” sheet,² (Exhibit 3) in PDF format on the City’s website. The City maintains complete control over the “Voter Resources for Landlords” information. City of East Lansing, Voter Resources for Landlords,

¹https://www.michigan.gov/-/media/Project/Websites/sos/01mcalpine/1_MIVoterRegistration.pdf?rev=4a8bf571675f43e086e42c8c5e17f33d

²<https://www.cityofeastlansing.com/DocumentCenter/View/663/Student-Voter-FAQs-PDF>

<https://www.cityofeastlansing.com/206/Voter-Resources-for-Landlords> (last visited March 13, 2023).

21. Section 6-175 § 1006.4 mandates that landlords provide “specific information on how to register to vote and the requirements to register, notice that election information and further registration information is available on the Secretary of State's website as well as the City's website through the City Clerk department, and a copy of the State of Michigan Voter Registration Application.”

22. A copy of the State of Michigan Voter Registration Application and the One Pager Plus: Voter (Student) FAQ are the specific information on how to register to vote that landlords must provide to comply with Section 6-175 § 1006.4. *See* Exhibits 2 & 3.

23. Violation of Sec. 6-175, § 1006.4 is a “civil infraction.”

24. Section 6-175 § 1006.4 does not specifically identify the consequences for a “civil infraction” for violating § 1006.4.

25. However, a monetary penalty of not more than \$1,000, and other penalties for violation of Sec. 6-175 § 1006.4 are provided by the general municipal civil infraction provision of City of Lansing City Code Sec. 1-13, titled “Penalty for municipal civil infraction”

26. Section 1-13 apply to violations of Sec. 6-175 § 1006.4.

27. Additional penalties for failing to comply with the mandates of Sec. 6-175 § 1006.4 are directly tied to rental licensing and rental relicensing.

COUNT

Violation of Civil Rights under 42 U.S.C. § 1983, declaratory, and permanent injunctive relief against the City of East Lansing

East Lansing's requiring landlords to provide information about voter registration and voter application forms new tenants is the moving force of the constitutional violation of Plaintiff landlord's protected First Amendment rights not to speak.

28. The Plaintiffs adopt and incorporate by reference all previous paragraphs as if fully restated in support of the further allegations asserted under Count I.

29. The First Amendment of the United States Constitution protects the right to free speech.

30. The First Amendment of the United States Constitution protects an individual's right to refrain from speaking.

31. Under 42 U.S.C. § 1983, the statute provisions provide persons a federal cause of action based on state violations of federal law:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

32. The Court has statutory authority under 28 U.S.C. § 2201 to issue declaratory judgments.

33. East Lansing's city code requires landlords, "At the time occupancy is given to the tenant" to "provide each tenant with specific information on how to register to vote and the requirements to register" with "election information and further registration information

[] available on the Secretary of State's website as well as the City's website through the City Clerk department” East Lansing, Mich., City Code Sec. 6-175, § 1006.4.

34. Plaintiff landlords in East Lansing, by threat of civil infraction fines are required to carry East Lansing’s policy and ideological message to prospective tenants.

35. Plaintiff landlords, fearful of civil prosecution, have complied with East Lansing City Code Sec. 6-175, § 1006.4 and have provided tenants with documents regarding where and how to register to vote as required under the Code’s provision.

36. East Lansing’s underlying legislative policy for passing Sec. 6-175, § 1006.4 requiring landlords to provide voter registration materials to tenants is an ideological belief of the government. During the February 5 public hearing, starting at 1:10:04, Collin Cronin of DTN Management spoke in opposition to the ordinance. During his statements, he said "Pushing political agendas or political emphasis isn’t something I believe should be pressed on landlords to do." He later continued: "I hate being in the business of picking which rights we like the most, or which rights we don't like the most." City of East Lansing City Council, *Public Hearing 12. Consideration of Ordinance No. 1293*, at 1:10:04 (February 5, 2013).

37. Later in the February 5, 2013 hearing, starting at 1:17:47, Tom Kashinski, the President, DTN Management also spoke against the ordinance, questioning: "What does voter registration have to do with our relationship with our residents? What does it have to do with behavior issues or safety issues? What is next? What is the next thing that you would like to require [us] to do that has nothing to do with our business?" City of East Lansing City Council, *Public Hearing 12. Consideration of Ordinance No. 1293*, at 1:17:47 (February 5, 2013).

38. Plaintiff owner and owner agent Matt Hagan of Hagan Realty, as a landlord, also voiced his opposition to the ordinance at the February 5, 2013 public hearing, saying: "Why is this just a student related issue? If we truly want to have everybody voting, let's not just make this a landlord requirement, let's make this a requirement of all real estate agents. Put it in the buy/sell agreement... I mean, how extreme are we going to get here?" City of East Lansing City Council, *Public Hearing 12. Consideration of Ordinance No. 1293*, at 1:27:40 (February 5, 2013).

39. Regardless, Hagan believes the City's requirements and associated civil penalties compel him to do something he does not wish to communicate to others. Hagan, would rather remain silent.

40. Hagan also contests using his website as a link to voter registration. By doing so, it represents his support of the City's policy and ideology. He does not agree with it, as a landlord, being forced to convey the City's messaging when he would rather be silent.

41. East Lansing's policy and ideology—its charge and responsibility—in part, is to get more people registered to vote, assist with preregistration, and to encourage people to participate in government, through landlords. The City of East Lansing's policy and ideology requiring Plaintiff as a landlord to provide documents, specifically documents targeted to students, regarding where and how to register to vote to new tenants is compelled speech.

42. The City of East Lansing's Sec. 6-175, § 1006.4 requiring Plaintiff as a landlord to provide documents regarding where and how to register to vote to new tenants is compelled speech.

43. Requiring Plaintiffs as landlords to provide documents regarding voter registration to and tenants is to make landlords couriers of governmental ideology as embodied within the policy underlying Sec. 6-175, § 1006.4 of the City of East Lansing's City Code and is compelled speech.

44. The desired effect for the City of East Lansing expressed policy and ideology to mandate landlords to provide voter registration information under Sec. 6-175, § 1006.4 is to increase registered voters, specifically student voters.

45. Increasing registered voters, as the City of East Lansing has expressed—"to register students both on and off campus"—is not the charge or responsibility of Plaintiff as a landlord who rents landlord dwelling units in East Lansing. *See Exhibit 1* (Memo. Marie K. McKenna, East Lansing City Clerk (Jan. 31, 2013)).

46. The City of East Lansing's expressed policy and ideology is to have Plaintiff as a landlord be the courier of East Lansing's message through Sec. 6-175, § 1006.4.

47. Part of the City of East Lansing's expressed policy and ideology is to have Plaintiff as a landlord-tenant landlord be an agent for the City's vision through Sec. 6-175, § 1006.4.

48. The City of East Lansing seeks to have Plaintiff as a landlord convey a particular message to tenants as expressed under Sec. 6-175, § 1006.4 .

49. The City of East Lansing seeks to compel private persons, such as Plaintiff as a landlord, to convey government's speech under Sec. 6-175, § 1006.4.

50. Section Sec. 6-175, § 1006.4 is not an ordinance provision reasonably related to the business purpose of a landlord.

51. Plaintiffs Matt Hagan, and Hagan Realty, Inc., as private persons and landlords, do not want to convey the government's speech as mandated under Sec. 6-175, § 1006.4.

52. Plaintiffs, as private persons and as landlords have not expressed a desire to be or be a necessary part of East Lansing's vision to carry messages to tenants regarding where and how to register to vote as required under East Lansing's City Code Sec. 6-175, § 1006.4 .

53. Plaintiffs as private persons who happen to be landlords, did not agree, implicitly or expressly, to be a governmental messenger for East Lansing's policy and ideology under East Lansing's City Code Sec. 6-175, § 1006.4 .

54. Whether a tenant chooses to explore registering to vote is an individual's decision unrelated to entering into a lease agreement.

55. Whether a landlord agrees to enter into a lease agreement with a tenant is unrelated to that person deciding to explore registering to vote.

56. Increasing citizen participation in elections through registering voters is unrelated to renting a residence to tenants.

57. Increasing citizen participation in elections through registering persons to vote is unrelated to renting a residence.

58. Providing information as required under East Lansing's City Code Sec. 6-175, § 1006.4 about where and how to register to vote is not relevant to a tenant's decision to enter into a lease agreement for a residence with a landlord in East Lansing.

59. Providing information as required under East Lansing's City Code Sec. 6-175, § 1006.4 about where and how to register to vote is not relevant to a tenant being fully informed to make a decision whether to rent a residence with an landlord in East Lansing.

60. Providing information as required under East Lansing's City Code Sec. 6-175, § 1006.4 about where and how to register to vote is not relevant to any resulting consequences of a tenant's decision whether to enter into a lease agreement with an landlord in East Lansing for a residence.

61. Providing information as required under East Lansing's City Code Sec. 6-175, § 1006.4 about where and how to register to vote is not relevant in the context of procedures involving a tenant's decision whether to rent with a particular landlord in East Lansing for a residence.

62. Determining whether to rent a residence to a prospective tenant is also at the discretion of the landlord based upon disclosed criteria upon which the individual might be judged generally, before accepting a rental application or application fee.

63. Whether a prospective tenant is a registered voter or is eligible to register to vote is not a prerequisite to entering into a lease agreement.

64. Whether a prospective person is a registered voter or is eligible to register is not a determinative factor and has no consequence for either the prospective tenant or landlord to entering into the lease agreement.

65. Providing a new tenant with information as required under East Lansing's City Code Sec. 6-175, § 1006.4 regarding where or how to register to vote is not a health issue as it relates to the tenant-landlord relationship concerning the rental of a residence.

66. Providing a new tenant with information as required under East Lansing's City Code Sec. 6-175, § 1006.4 regarding where or how to register to vote is not related to morals—

societal or otherwise—in a prospective tenant’s decision whether to enter into a lease agreement with an landlord.

67. Providing a new tenant with information as required under East Lansing’s City Code Sec. 6-175, § 1006.4 regarding where or how to register to vote is not a welfare issue as it relates to the tenant-landlord relationship concerning the rental of a residence.

68. Providing a new tenant with information regarding where or how to register to vote is not a safety issue as it relates to the tenant-landlord relationship concerning the rental of a residence.

69. The City of East Lansing has less restrictive or less burdensome means to achieve its policy and goal to increase citizen participation in elections without mandating landlords to provide a voter application form or “how to” register information.

70. Moreover, at the time the ordinance passed, Hagan had no evidence from East Lansing to show that the City’ mandates placed upon landlords under Sec. 6-175, § 1006.4 would increase citizen participation in elections.

71. In Hagan’s view, the City of East Lansing cannot show the mandates placed upon landlords under Sec. 6-175, § 1006.4 will increase citizen participation in elections, it cannot show that the provision is actually necessary to solve “problems” it has identified, if any.

72. Instead, the City of East Lansing is putting its particular message in the mouth of an unwilling speakers, here, Plaintiffs, through mandated requirements to provide to a voter application form and “how to” register information to tenants to increase citizen participation in elections.

73. Even if East Lansing had any evidence that the mandated provision under Sec. 6-175, § 1006.4 increases voter registration or an increase in a citizen's participation in elections, it cannot interfere with Hagan's desire to remain silent and not be a courier for the City's political or ideological messaging related to voting.

74. The City of East Lansing seeks to have landlords convey a particular message to tenants to increase citizen participation in elections through mandated requirements to provide to a voter registration form and "how to" register information.

75. Plaintiff does not want to act as a courier of the government's message, here, the City of East Lansing.

76. East Lansing's City Code Sec. 6-175, § 1006.4, is unconstitutional because it is compelled speech.

77. East Lansing's City Code Sec. 6-175, § 1006.4, is facially unconstitutional because it is compelled speech.

78. East Lansing's City Code Sec. 6-175, § 1006.4, as applied to East Lansing landlords is unconstitutional because it is compelled speech.

79. Plaintiffs, as private persons have a First Amendment right to refrain from speaking.

80. Plaintiffs, as private persons has a First Amendment right to avoid becoming the courier of East Lansing's policy and ideology message.

81. East Lansing's policy and ideology embodied within East Lansing's City Code Sec. 6-175, § 1006.4 , violates the First Amendment rights of Plaintiffs, as landlords in East Lansing.

82. East Lansing's policy and ideology as expressed through East Lansing's City Code Sec. 6-175, § 1006.4, is defective and is the moving force behind the violations of Plaintiffs, protected First Amendment rights as a landlord.

83. East Lansing has acted either intentionally, recklessly, or with callous indifference to the constitutionally protected First Amendment rights not to speak, have threatened Plaintiffs, as landlords with penalties and criminal prosecution if they fail to be courier of the City's policy or ideological message under East Lansing's City Code Sec. 6-175, § 1006.4 to prospective tenants or tenants.

84. East Lansing's policy and ideology is violative of the First Amendment and, thus, is defective and is the moving force behind the constitutional challenge to East Lansing's City Code Sec. 6-175, § 1006.4 .

85. An actual controversy exists between Plaintiffs as landlord and the City of East Lansing in which Plaintiff has genuine and opposing interests that are direct and substantial which requires a judicial determination to be final and conclusive regarding the rights asserted by the Plaintiff as a landlord and the policy or ideology of the City.

86. Because East Lansing's policy and ideology is the moving force behind the violations of Plaintiffs as landlords' protected First Amendment rights to free speech, East Lansing has violated Plaintiff's civil rights under 42 U.S.C. § 1983.

87. Plaintiffs request this Court to adjudicate that East Lansing's policy and ideology, as found under East Lansing's City Code Sec. 6-175, § 1006.4, violates protected First Amendment rights to free speech under 42 U.S.C. § 1983.

88. East Lansing's City Code Sec. 6-175, § 1006.4 fails strict scrutiny because it is not narrowly tailored to meet a compelling state interest. Section 1006.4 is fatally under-inclusive because it does not require everyone to provide voter registration information to everyone else.

89. Section 1006.4 is fatally under-inclusive because it does not require all tenants to receive a voter registration form, thereby excluding pre-existing tenants.

90. Because East Lansing has violated the civil rights of Plaintiff landlords, they are entitled to nominal damages or other monetary damages to be determined at the time of trial.

91. Because East Lansing has violated the civil rights of Plaintiff landlords under 42 U.S.C. § 1983, they are entitled to attorney fees, costs, and disbursements.

92. This Court should declare East Lansing's City Code Sec. 6-175, § 1006.4 unconstitutional.

93. This Court should declare East Lansing's City Code Sec. 6-175, § 1006.4 facially unconstitutional or in the alternative declare Sec. 6-175, § 1006.4 unconstitutional as applied.

94. Furthermore, Plaintiff landlords, request this Court to issue declaratory and permanent injunctive relief directing the City of East Lansing to cease and prevent any further City conduct under Chapter 6, Art. III Section 6-175 § 1006.4 of the City Code, and all other relief this Court may deem just under the circumstances.

JURY TRIAL DEMANDED

95. Plaintiff demands a jury trial regarding the allegations asserted in the instant Complaint.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs request that this Court:

1. Declare City of East Lansing Code of Ordinances, Ch. 6, Art. III Sec. 6-175, § 1006.4 facially unconstitutional or in the alternative unconstitutional as applied;
2. Declare that the City of East Lansing Code of Ordinances, Ch. 6, Art. III Sec. 6-175, § 1006.4, violated the Plaintiffs' protected right of free speech under the First Amendment;
3. Declare that that the City of East Lansing, by City of East Lansing Code of Ordinances, Ch. 6, Art. III Sec. 6-175, § 1006.4, violated the Plaintiffs' civil rights under 42 U.S.C. § 1983;
4. Grant permanent injunctive relief against the implementation or enforcement of City of East Lansing Code of Ordinances, Ch. 6, Art. III Sec. 6-175, § 1006.4;
5. Award nominal damages against the City of East Lansing, if necessary;
6. Award any compensatory damages or punitive damages against the City of East Lansing, if warranted;
7. Award Plaintiffs reasonable attorney fees, litigation expenses, and costs as allowed under 42 U.S.C. § 1988, and all other applicable laws, and grant such other relief as this Court deems just to the Plaintiffs and their attorneys; and
8. Any and all other relief, monetary or otherwise, this Court deems just or reasonable under the circumstances alleged in this Complaint.

Dated: March 16, 2023

/s/ Erick G. Kaardal

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