

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS LOCAL 3233,  
ROBERT GERLACH, RONALD HOSKINS,  
and ANDREW J. VAN SLAMBROUCK,

Plaintiffs,

Hon. Marianne O. Battani  
Case No. 02-60145

v.

FRENCHTOWN CHARTER TOWNSHIP,

Defendant.

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**AMENDED COMPLAINT**

Plaintiffs, International Association of Fire Fighters Local 3233, Robert Gerlach, Ronald

Hoskins and Andrew J. Van Slambrouck, by their attorneys, bring this Amended Complaint for Declaratory Relief and other relief against Defendant Frenchtown Charter Township (hereinafter “Frenchtown”) and state as follows:

### **INTRODUCTION**

1. Plaintiffs file this action to challenge the constitutionality of a Frenchtown ordinance prohibiting firefighters to speak to the news media about any “fire department matters” -- including matters of public concern. Plaintiffs assert that the ordinance violates the First Amendment to the U.S. Constitution and 42 U.S.C. §1983. They seek an order declaring that the ordinance is unconstitutional, a permanent injunction enjoining its enforcement and other relief.

2. Plaintiffs also file this action to challenge the constitutionality of a unilaterally imposed Frenchtown Personnel Policy which prohibits fire fighters from furnishing any information relative to the business of policy affairs of the fire department. Plaintiffs assert that the Personnel Policy violates the First Amendment to the U.S. Constitution and 42 U.S.C. §1983. Plaintiffs seek an order declaring that the Personnel Policy is unconstitutional, a permanent injunction enjoining its enforcement and other relief.

### **PARTIES, JURISDICTION AND VENUE**

3. Plaintiff International Association of Fire Fighters Local 3233 (hereinafter “IAFF 3233”) is a labor organization representing full-time firefighters of Frenchtown.

4. Robert Gerlach is the President of IAFF 3233 and a resident of Frenchtown.

5. Ronald Hoskins is the Vice President of IAFF 3233 and a resident of Frenchtown.

6. Andrew J. Van Slambrouck is a resident of Frenchtown.

7. Defendant Frenchtown is a municipal corporation organized in and existing under the

Constitution and laws of the State of Michigan.

8. Jurisdiction is proper under 28 U.S.C. §§1331 and 1343, because federal questions are presented in this action under the First Amendment of the United States Constitution and 42 U.S.C. §1983.

9. Venue is proper under 28 U.S.C. §1391(b)(1) and (2) because this is a judicial district where the Defendant resides and where a substantial part of the events or omissions giving rise to the claims occurred or will occur.

**ALLEGATIONS REGARDING ORDINANCE NO. 158-2**

10. On August 14, 2001, Gerlach attended a public meeting of the Frenchtown Township Board at which he discussed a recent fire in Frenchtown in which four persons died. Gerlach expressed concern that staffing levels and incident command procedures contributed to the fire fatalities.

11. Frenchtown Township Supervisor James Spas told Gerlach that he considered the comments made at the Township Board meeting to be “a slap in the face.”

12. On August 16, 2001, the Monroe Evening News carried a story about the Township Board meeting and some of the statements made by Gerlach. (Ex. A)

13. Shortly thereafter, the Township Board adopted an amendment to Ordinance No. 158-2 which establishes Board authority over the fire department. (Ex. B)

14. Effective November 1, 2001, Ordinance No.158-2, Section 7 was amended to provide as follows:

The Fire Chief, or his/her designee, shall be the only authorized person who may release facts regarding fire department matters, fires or other emergencies to the news media. All other personnel

shall refer all media inquiries to the Chief or the designee. . . . Any violation of this provision shall subject the violator to disciplinary procedure. (Ex. B)

15. Ordinance No. 158-2, Section 8 provides:

Any person, firm or corporation violating any section of this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 or by being imprisoned in the County Jail for not more than ninety (90) days, or both such fine and imprisonment at the discretion of the Court. Each day of violation shall constitute a separate offense. (Ex. B)

16. On about December 7, 2001, the Michigan Department of Consumer & Industry Services General Industry Safety Division issued a report which found the Frenchtown Fire Department to be in violation of MIOSHA rules applicable to fire departments in numerous respects, including three violations characterized as “serious” for inadequate training, inadequate incident command system and inadequate organizational structure. (Ex. C)

17. On about February 18, 2002, a reporter from the Monroe Evening News contacted Gerlach about the above-referenced MIOSHA citation. Gerlach responded that because of Ordinance No.158-2, neither he nor any other member of the fire department could make any statements to the media on fire department matters for fear of discipline and/or criminal prosecution.

18. On February 19, 2002, the Monroe Evening News allegedly quoted Township Supervisor Spas as stating Ordinance No. 158-2 only applied to official departmental business, not safety issues the fire fighters believe do exist. (Ex. D)

19. Late February 2002, Gerlach and Hoskins met with Township Supervisor Spas to ask whether the quote attributed to him in the Monroe Evening News was accurate with respect to the applicability of Ordinance No. 158-2. Spas replied that he was misquoted in the newspaper article

and warned Gerlach and Hoskins “not to believe everything you hear in the media.”

20. On about May 20, 2002, Gerlach delivered a letter to Spas requesting information on the scope of Ordinance No. 158-2. (Ex. E) Gerlach did not receive a response from Spas or Frenchtown.

21. To date, members of the Frenchtown Fire Department have been unable to speak to the media about the MIOSHA violations or any other fire department matters of public concern for fear of discipline and/or criminal prosecution under Ordinance No.158-2.

22. But for Ordinance No. 158-2 and their fear of prosecution and disciplinary action, Plaintiffs IAFF 3233, Gerlach and Hoskins would have spoken to the media about MIOSHA violations, collective bargaining negotiations, unfair labor practice allegations and other fire department matters of public concern.

23. In the future, IAFF 3233, Gerlach and Hoskins want to be able to speak to the media about the MIOSHA violations, the unfair labor practice allegations and other fire department matters of public concern, but fear that they will be disciplined and/or criminally prosecuted for engaging in such activity.

24. Van Slambrouck, as a resident of Frenchtown, wants to be informed about matters of public concern regarding the fire department from fire department employees because such information is needed or appropriate to enable him to make informed decisions about the operation of the government.

**ALLEGATIONS REGARDING FRENCHTOWN**  
**FIRE DEPARTMENT PERSONNEL POLICY SECTION 38**

25. On January 1, 1991, Frenchtown unilaterally implemented a Fire Department Personnel Policy (hereinafter “Policy”). Policy Section 38 provides “No information relative to the business

or policy affairs of the fire department shall be furnished to persons not connected therewith, except as authorized by the Fire Chief pursuant to the Freedom of Information Act.” (Ex. F)

26. Frenchtown’s attorneys have made representations that Policy Section 38 prohibits fire fighters from speaking to anyone about fire department matters. (Ex. G)

**CAUSES OF ACTION**

**COUNT I**

**ORDINANCE NO. 158-2 VIOLATES  
THE FIRST AMENDMENT AND 42 U.S.C. §1983**

27. At all relevant times, Defendant was acting under the color of law, within the meaning of 42 U.S.C. §1983.

28. Ordinance No.158-2 has the effect of chilling the exercise of free speech and association protected by the First Amendment to the United States Constitution.

29. Ordinance No.158-2 violates free speech rights and associational rights of the Plaintiffs under the First Amendment of the United States Constitution in at least the following respects:

- a. By proscribing speech which constitutes an exercise in protected expressive and associational rights, Ordinance No.158-2 is unconstitutionally overbroad;
- b. Because of the threat of discipline and prosecution, Plaintiffs and others have been chilled from exercising their expressive rights to speak to the media about matters of public concern involving the fire department and/or to learn from the media about such concerns; and
- c. Because Ordinance No. 158-2 constitutes an unlawful prior restraint.

30. Absent permanent injunctive relief issued by this Court, Plaintiffs and others will continue to be hindered and chilled from exercising their protected free speech and associational rights.

31. There exists no adequate remedy at law.

**COUNT II**

**POLICY SECTION 38 VIOLATES  
THE FIRST AMENDMENT AND 42 U.S.C. §1983.**

32. At all relevant times, Defendant was acting under color of law, within the meaning of 42 U.S.C. §1983.

33. Policy Section 38 has the effect of chilling the exercise of free speech and association protected by the First Amendment to the United States Constitution.

34. Policy Section 38 violates free speech rights and associational rights of the Plaintiffs under the First Amendment of the United States Constitution in at least the following respects:

- a. By proscribing speech which constitutes an exercise in protected expressive and associational rights, Policy Section 38 is unconstitutionally overbroad;
- b. Because of the threat of discipline and prosecution, Plaintiffs and others have been chilled from exercising their expressive right to speak about matters of public concern involving the fire department; and
- c. Because Policy Section 38 constitutes an unlawful prior restraint.

35. Absent permanent injunctive relief issued by this Court, Plaintiffs and others will continue to be hindered and chilled from exercising their protected free speech and associational rights.

36. There exists no adequate remedy at law.

**RELIEF REQUESTED**

37. Plaintiffs, on behalf of themselves and others similarly situated, request that this Honorable Court:

- a. Declare Frenchtown Ordinance No.158-2, Section 7 unconstitutional on the grounds set forth above;
- b. Issue permanent injunction enjoining Defendant from enforcing or threatening to enforce Ordinance No.158-2, Section 7;

- c. Declare Frenchtown Policy Section 38 unconstitutional on the grounds set forth above;
- d. Issue a permanent injunction enjoining Defendant from enforcing or threatening to enforce Policy Section 38;
- e. Award Plaintiffs nominal damages to compensate them for the violation of their First Amendment rights;
- f. Award Plaintiffs costs and attorneys fees incurred in this lawsuit pursuant to 42 U.S.C. §1988; and
- g. Grant such other and further relief as shall be just and proper.

Respectfully submitted,

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Dated: October 7, 2002

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