

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CINDY HARRIS, F. RICHARD HEATH, JAY MANKITA, and KATHY MOSER ,	)	
Plaintiffs,	)	CIVIL ACTION
	)	
vs.	)	Civil Action No. 2:06 CV 169
	)	
	)	
	)	
TOWNSHIP OF O’HARA, ALLEGHENY COUNTY, PENNSYLVANIA; ZONING HEARING BOARD OF O’HARA TOWNSHIP; O’HARA TOWNSHIP COUNCIL; CINDY L. DAVIS, in her individual capacity and as Zoning Officer of O’Hara Township; and DOUGLAS C. ARNDT, in his individual capacity and as Township Manager, O’Hara Township,	)	
Defendants.	)	

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs, Cindy Harris, F. Richard Heath, Jay Mankita and Kathy Moser (“Plaintiffs”),  
by and through their undersigned attorney, bring this Complaint against the above-named  
Defendants asserting violations of rights guaranteed to them under the United States  
Constitution and in support thereof allege as follows:

INTRODUCTION

Imagine for a moment that a municipality would first enact and then enforce a local ordinance that limited the number of times each year that homeowners within its boundaries could invite guests into their homes. Imagine further that – as a method of traffic control - the

municipal government also limited the number of guests that its residents could entertain at any one time. Not only that, but this ordinance also prohibited the residents and their guests from playing or listening to acoustic instruments or sharing a pot-luck dinner. Under this ordinance, it was a further violation for a homeowner to allow a newspaper to publish an article about a gathering at his/her home and such homeowner risked prosecution if he/she dared to maintain a website that announced such get-togethers. It also provided stiff penalties if any guests voluntarily chipped in to make up a gratuity to be given to those playing the acoustic instruments.

One will not find the foregoing events in the text of George Orwell's 1984. Nor in a law school hypothetical. It is not fiction. These events actually took place – not in 1963 Communist East Germany – but, rather, in the first decade of the twenty-first century in the Township of O'Hara, Allegheny County, Pennsylvania.

Fortunately, the protections afforded to the citizens of this nation –including the residents of O'Hara Township- by the United States Constitution, assure that they will not be deprived by their government of their personal liberties. These protections demand that this sort of egregious abuse of power by the municipal government of O'Hara Township not only be nullified, but emphatically condemned.

#### JURISDICTION AND VENUE

1. This is an action under 42 U.S.C. §§1983, 1985(3) and 1988 seeking damages and redress by declaratory and injunctive relief as well as the award of counsel fees, for the deprivation, under color of state law, of rights guaranteed by the United States Constitution and the First, Fifth, and Fourteenth Amendments to the United States

Constitution and for related common law and statutory claims under the laws of the Commonwealth of Pennsylvania. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), and it has supplemental jurisdiction over the Plaintiffs' state law claims under 28 U.S.C. §1367(a).

2. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because all of the Defendants reside within this judicial district and all of the claims asserted by Plaintiffs arose within this District.

#### PARTIES

3. Plaintiff, Cindy Harris (“Plaintiff-Homeowner”) is an adult individual residing at 53 Fox Pointe Drive, O’Hara Township, Pennsylvania,
4. Plaintiff, Dr. F. Richard Heath (“Plaintiff-Homeowner”) is an adult individual residing at 53 Fox Pointe Drive, O’Hara Township, Pennsylvania, and is the husband of Cindy Harris..
5. Plaintiff, Kathy Moser, is a guitarist and singer-songwriter who was a guest at 53 Fox Pointe Drive, O’Hara Township, Pennsylvania on February 2, 2006.
6. Plaintiff, Jay Mankita, is a guitarist and singer-songwriter who was a guest at 53 Fox Pointe Drive, O’Hara Township, Pennsylvania on February 2, 2006.
7. Defendant, Township of O’Hara, is a Township of the First Class, organized and existing under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901 et. seq. and the First Class Township Code, 53 P.S. § 55101 et. seq.
8. Defendant O’Hara Township Council (“Council”) is the duly elected legislative body of the Township.

9. Defendant, O'Hara Township Zoning Board "Board," is the entity charged with conducting hearings and appeals regarding, inter alia, zoning enforcement determinations by the Township. The Board and the Township Council are separate entities.
10. Defendant, Douglas C. Arndt, is the Township Manager and is an adult residing in this judicial district with a place of business at 325 Fox Chapel Road, Pittsburgh, Pennsylvania 15238. He is being sued herein in his both official and individual capacities.
11. Defendant, Cindy L. Davis is the Township Zoning Officer (the "Zoning Officer") and is an adult residing in this judicial district with a place of business at 325 Fox Chapel Road, Pittsburgh, Pennsylvania 15238. She is being sued herein in both her official and individual capacities.

## FACTS

12. On or about February 18, 2003, the Township, by its Zoning Officer, issued an Enforcement Notice, notifying the Plaintiff-Homeowners that they were in violation of the Zoning Ordinance and ordering them to cease and desist from having house concerts, because such concerts were not a permitted use in the R-2 Zoning District. (Plaintiff Exhibit 1)
13. Plaintiff-Homeowners had been holding these musical gatherings or house concerts for almost five years prior to receiving this notice.
14. Cindy Harris is an accomplished instrumentalist and vocalist who invites similarly accomplished out-of-town musicians, (acoustic musicians who perform a wide variety

of folk and traditional music) to a party that includes a performance by the guest and an instrumental jam session and/or group singing and potluck meal.

15. Plaintiff-Homeowners, who have resided in their home in the Township since 1991, provide the soft drinks, snacks and coffee, and sometimes, if there is a pot luck dinner preceding or following the music, they also contribute a dish or several to the dinner.
16. Ms. Harris appealed the Enforcement Notice to the Board and a hearing was held on April 14, 2003.
17. Kim Watterson, Plaintiff-Homeowner's next door neighbor, testified at the hearing about the nature of these gatherings, although, because she chose never to attend the gatherings when she was invited, she had no direct knowledge of them.
18. Ms. Watterson erroneously testified before the Board that the musicians agreed to play for room and board, or for room, board and a share of the proceeds. She also erroneously testified that these house concerts and their promotion went beyond normal parties common in the neighborhood. (Plaintiff's Exhibit 2)
19. By written decision, (Plaintiffs' Exhibit 2), the Board affirmed the Zoning Officer and again ordered the Plaintiff-Homeowners to cease and desist holding these gatherings.
20. The Board found that the alleged presence of five factors was indicative of "commercial activity" on Plaintiffs' property which was not permitted in an R-2 Zone. These factors were: 1. the frequency of the house concerts – at least eight per year, 2. alleged parking problems - including overnight parking of a trailer on the street and a single instance where police requested that cars be moved to facilitate access by a snow plow, 3. the request for donations – allegedly to be shared between the "performers" and the Plaintiff-Homeowners, 4. advertising - on a single occasion these

“parties” (used in Plaintiff’s Exhibit 2) at Plaintiffs’ house were allegedly advertised in the newspaper, and 5. the Plaintiffs’ maintenance of a web-site to advise “outsiders” of the concerts.

21. At the hearing on April 14, 2003, it was evident that the Board believed that the alleged presence of all these factors added up to an impermissible use of the residence by Plaintiff-Homeowners.
22. In its Findings of Fact and Conclusions of Law, the Board concluded that the “particular concerts as a whole, and conducted in the manner in which they have been handled heretofore” must cease and desist. (Plaintiffs’ Exhibit 2)
23. After the Plaintiff-Homeowners received a copy of the Findings of Fact and Conclusions of Law, Plaintiff-Homeowners changed the manner in which they conducted the gatherings in an attempt to comply with the Board’s specific ruling and to avoid further problems with the zoning officials.
24. Plaintiff-Homeowners decreased the frequency of the gatherings. They held three (3) in 2004, and three (3) in 2005, with four (4) scheduled in 2006.
25. Plaintiff-Homeowners consistently advised their guests to be careful not to park in front of anyone’s driveway and to be sure that there was enough room between cars parked on both sides of the road for through traffic. No parking or congestion problems have occurred during these musical gatherings since before the April 14, 2003 hearing took place.
26. Although the Board indicated that the presence of a guest’s trailer parked in front of Plaintiff-Homeowners house was a problem, there is no law or zoning regulation prohibiting a homeowner’s guest from parking his or her trailer overnight in front of a

resident's house, and consequently the Board was unable to cite to any such prohibition.

27. Plaintiff-Homeowners do not, nor have they ever, shared with the guest musicians any donations collected from the other guests. They do not have now, nor have they ever, had the intention to profit or make any money from these gatherings. They merely love the music and the chance to share it with others with similar interests.
28. Plaintiff-Homeowners typically request that guests make a contribution for the musicians, but not all the guests do, and are not required to do so. At times in the past, when Plaintiff-Homeowners believed that not enough guests had chipped in, Plaintiff-Homeowners themselves contributed money to the basket for the musicians.
29. Plaintiff-Homeowners always freely provide drinks and snacks for the guests and guest musicians.
30. Plaintiff-Homeowners invite the guest musicians to stay overnight with them before and/or after the party, to visit and play more music with them. Most do stay, but some have schedules that require them to leave immediately following the party.
31. Guests often bring along home-made snacks to be shared among all those present. At other times, a pot-luck supper precedes or follows the music, and Plaintiff-Homeowners always contribute at least one, more often several, dishes to the supper along with all the beverages.
32. Neither prior to, nor since the Board's hearing have Plaintiff-Homeowners ever paid for advertising in any newspaper or any other publication. Rather, a short listing of one concert appeared in the Pittsburgh Post Gazette in January, 2003 because Cindy Harris chose to name the gathering an "Ignore the Superbowl Party and House

Concert”. A Post Gazette reporter, hearing about this and thinking that this was interesting, called and asked Ms. Harris if she would mind if it were included in the weekend entertainment section and she agreed, with the proviso that her address not be listed.

33. Since that time, Plaintiff-Homeowners have not agreed to allow any newspaper or other publication to write about their house concerts, and as far as they are aware, nothing has appeared in any newspaper about these gatherings since April, 2003.
34. Plaintiff, Cindy Harris, whose business is running an internet service company, did maintain a web site prior to the hearing, where she provided detailed information about the house concerts, the musicians, her reactions to the music and invited people to join the group of people at her home enjoying acoustic music together.
35. After the Board hearing, she shut down the web site noting, “On April 14, 2003, the O’Hara Township (Pennsylvania) Zoning Hearing Board determined that a web site can be considered advertising and therefore an indicator of commercial activity. For that reason I am removing information on upcoming house concerts from this site. If you’re interested in house concerts in the Pittsburgh area, drop me a note.” No more information on house concerts was thereafter posted.
36. The musical gatherings continued in this revised manner, and individuals who wanted to add their names to the list of people receiving e-mails from Ms. Harris about these gatherings were contacted directly by her. Ms. Harris would question them about their reasons for wanting to join the e-mail list and if they did not respond appropriately, they did not receive e-mails about future gatherings.

37. Plaintiff-Homeowners agreed to change the manner in which they conducted these house concerts in order to comply with the Township's findings and conclusions, although other Township residents who invited guests to their homes are not required to limit the number of their gatherings, nor limit the number of their guests. They are also not required to refuse to talk to newspaper reporters, nor are they required to refrain from asking their guests to chip in for food, drink or entertainment.
38. Despite all of Ms. Harris' changes to the manner in which she held these house concerts, on or about January 26, 2006, Cindy Harris, received a communication from the Zoning Officer, telling her that if she held her scheduled February 2, 2006 house concert, or any of the other scheduled house concerts, she risked prosecution by the Township and a fine of \$500.00 for each subsequent gathering in her home. (Plaintiff Exhibit 3)
39. On January 31, 2006, Plaintiffs' undersigned attorney met with the Zoning Officer, and the Township Solicitor, Phillip J. Weis, Esquire, to discuss the letter ordering Plaintiff-Homeowners not to hold such concerts in their home. Plaintiffs' counsel told the Zoning Officer and Mr. Weis, that Plaintiff-Homeowners had decided they would not cancel the "concert", which was to take place two days later because such "concert" was not conducted in the same manner in which it had been handled previously, and thus would not violate the May, 2003 cease-and-desist order. Plaintiffs' attorney described the manner in which the concerts had been changed significantly.
40. In a gesture of good will and in an effort to avoid litigation, Plaintiffs' counsel advised the Zoning Officer and Mr. Weis that Cindy Harris had even e-mailed all her

prospective guests and told them that she would not request that her guests chip in to pay the musicians who had come from out of town for the February 2, 2006 gathering.

41. Neither Attorney Weis nor the Zoning Officer would acknowledge that the scheduled concert would not violate the cease-and-desist order.
42. The gathering was held as scheduled on the February 2, 2006. About twelve (12) guest came to the house, and “Plaintiff-Musicians” played their songs. Guests brought homemade snacks and afterwards some of the guests and Plaintiffs participated in a instrumental jam session, while others sang along.
43. Having notified the Township solicitor and Zoning Officer that the concert would go forward despite the Township’s threat to prosecute them, and having become aware of the Township’s unwillingness to reconsider their threat to prosecute them, the Plaintiffs and their guests were fearful that the O’Hara Township police would disperse the gathering as allegedly violative of the cease-and-desist order.
44. The actions of the Defendants have cause Plaintiffs-Homeowners a great deal of fear, emotional distress, insomnia and headaches. They have suffered these psychological and physical effects because they the Township prohibited the gathering and threatened to haul them into court.
45. Attorney Weis has not returned the undersigned attorney’s phone calls since that date.

COUNT I – Violation of Due Process: Overbreadth of Zoning Ordinances  
42 U.S.C. § 1983

(Against the Township of O’Hara, the Zoning Hearing Board of O’Hara Township,  
O’Hara Township Counsel, Cindy L. Davis and Douglas C. Arndt)

49. Plaintiffs incorporate by reference the averments contained in all of the previous Paragraphs as if set forth at length.

50. In December, 2002, Counsel enacted the O’Hara Township Zoning Ordinance (the “Zoning Ordinance”).

51. Article V of the Zoning Ordinance deals with R-2 Suburban Residential Districts. In her February, 2003 Enforcement Notice of Zoning Violation, the Zoning Officer cited several provisions of Article V as the basis for her cease and desist directive. Similarly, in its April, 2003 Findings of Fact and Conclusions of Law, the Board affirmed the decision of the Zoning Officer, on the basis that “[c]ommercial activity is not permitted in a R-2 zone.”

52. Section 72-5.22, contained in Article V of the Zoning Ordinance, is entitled “Permitted Uses.” It lists six (6) “Principal Uses” and ten (10) “Accessory Uses” that are permitted in an R-2 Zone. Section 72-5.23, also in Article V, enumerates an additional six (6) “Conditional Uses” of property in an R-2 Zone. Thus, in total, Article V lists twenty-two possible uses of property located in an R-2 Zone.

53. Section 72-1.6 of the Zoning Ordinance provides that “[l]and uses not specifically provided for in Article IV through Article X are hereby prohibited.” This provision, therefore, has the effect of prohibiting any use of property in an R-2 Zone that is not one of the twenty-two uses specifically listed in Article V.

54. The foregoing provisions of the Zoning Ordinance, therefore, infringe upon a substantial amount of constitutionally protected activity and uses of the property.

Therefore, these provisions are facially invalid under the overbreadth doctrine.

55. The overbroad provisions of the Zoning Code cited above place unbridled discretion in the hands of Defendants to determine if a residential use is lawful, and are therefore facially invalid.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- a) Declaring that Sections 72-1.6, 72-5.22 and 72-5.23 of the Zoning Ordinance violate the Fourteenth Amendment of the United States Constitution because they are overbroad and are therefore null and void;
- b) Declaring that the April, 2003 Findings of Fact and Conclusions of law of the Board are null and of no effect; and
- c) Declaring that the February, 2003 Enforcement Notice of Zoning Violation issued by the Zoning Officer is null and of no effect.
- d) Enjoining Defendants Township, Board, Davis and Arndt from taking any action to enforce the foregoing provisions against Plaintiffs, and
- e) Awarding compensatory damages, and
- f) Awarding punitive damages against the individual defendants in their individual capacities; and
- g) Awarding attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- h) Ordering such other and further relief as the Court deems just and proper.

COUNT II - Violation of Due Process: Unconstitutional Vagueness of Zoning Ordinance  
42 U.S.C. § 1983

(Against the Township of O'Hara, the Zoning Hearing Board of O'Hara Township,  
O'Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

56. Plaintiffs incorporate by reference the averments contained in all of the previous paragraphs as if set forth at length.

57. In December, 2002, Counsel enacted the Zoning Ordinance.

58. Article V of the Zoning Ordinance deals with R-2 Suburban Residential Districts. In her February, 2003 Enforcement Notice of Zoning Violation, the Zoning Officer cited several provisions of Article V as the basis for her cease and desist directive. Similarly, in its April, 2003 Findings of Fact and Conclusions of Law, the Board affirmed the decision of the Zoning Officer, on the basis that “[c]ommercial activity is not permitted in a R-2 zone.”

59. Section 72-5.22, contained in Article V of the Zoning Ordinance, is entitled “Permitted Uses.” It lists six (6) “Principal Uses” and ten (10) “Accessory Uses” that are permitted in an R-2 Zone. Section 72-5.23, also in Article V, enumerates an additional six (6) “Conditional Uses” of property in an R-2 Zone. Thus, in total, Article V lists twenty-two possible uses of property located in an R-2 Zone.

60. Section 72-1.6 of the Zoning Ordinance provides that “[I]and uses not specifically provided for in Article IV through Article X are hereby prohibited.” This provision, therefore, has the effect of prohibiting any use of property in an R-2 Zone that is not one of the twenty-two uses specifically listed in Article V.

61. There is no definition of “commercial activity” in the Zoning Ordinance, as that term is used in the Board’s April, 2003 Findings of Fact and Conclusions of law.

62. A statute is void for vagueness when its prohibitions are not clearly defined. Here, all but twenty-two potential uses of Plaintiff Residents’ property are prohibited by the Zoning Ordinance. There are, thus, potentially thousands of uses which are prohibited, many of which implicate the Township residents’ First and Fourteenth Amendment rights to freedom of speech, association, and right to privacy.

63. Musical gatherings, parties and gatherings of friends are not explicitly permitted in the R-2 Zone of the Township, and therefore Section 72-1.6 purports to prohibit such residential uses.

64. The Zoning Ordinance provides no criteria by which the courts could review a finding that a resident’s use of his or her property in an R-2 zone was prohibited. Therefore, the provisions cited are void for vagueness.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- a) Declaring that Sections 72-1.6, 72-5.22 and 72-5.23 of the Zoning Ordinance violate of the Fourteenth Amendment of the United States Constitution because they are unconstitutionally vague and are therefore null and void;
- b) Declaring that the April, 2003 Findings of Fact and Conclusions of Law of the Board are null and of no effect; and
- c) Declaring that the February, 2003, Enforcement Notice of Zoning Violation and the Letter of January 26, 2006, issued by the Zoning Officer is null and no effect;

- d) Enjoining Defendants Township, Board, Council, Davis and Arndt from taking any action to enforce the foregoing provisions against Plaintiffs, and
- e) Awarding compensatory damages, and
- f) Awarding punitive damages against the individual defendants in their individual capacities;
- g) Awarding attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- h) Ordering such other and further relief as the Court deems just and proper.

COUNT III – Prior Restraint on Constitutional Rights to Free Speech, Association and  
Privacy  
42 U.S.C. § 1983

(Against the Township of O’Hara, the Zoning Hearing Board of O’Hara Township, O’Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

65. Plaintiffs incorporate by reference the averments contained in all of the previous Paragraphs as if set forth at length.

66. Any system of prior restraint bears a heavy presumption against its constitutional validity. The government, in this case the Township, Zoning Board, Township Council and Township officials, thus carries a heavy burden of showing justification for the imposition of such a restraint.

67. The provisions of the Zoning Code that prohibit all but twenty-two specific uses of a residence places unbridled discretion in the hands of a Township official to prohibit the use by homeowners of their land and home for constitutionally protected speech, association and privacy, and therefore the Code on its face constitutes an unlawful prior restraint.

68. The Defendants' Order to the Plaintiff-Homeowners to cease and desist holding future musical gatherings in their home is, as applied, an unlawful prior restraint on Plaintiffs-Homeowners' rights to freedom of speech, association and privacy as guaranteed by the U.S. Constitution.

69. The Defendants' Order to the Plaintiff-Homeowners to cease and desist holding future musical gatherings in their home is, as applied, an unlawful prior restraint on Plaintiff-Musicians' rights to freedom of speech, association and privacy as guaranteed by the U.S. Constitution.

70. The Township cannot meet its heavy burden to show justification or a compelling state reason for prior restraint of Plaintiffs' constitutionally protected rights.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- a) Declaring that Sections 72-1.6, 72-5.22 and 72-5.23 of the Zoning Ordinance violate of the United States Constitution because they constitute a prior restraint;
- b) Declaring that the April, 2003 Findings of Fact and Conclusions of law of the Board are null and of no effect; and
- c) Declaring that the February, 2003, Enforcement Notice of Zoning Violation and the Letter of January 26, 2006, issued by the Zoning Officer is null and no effect;
- d) Enjoining Defendants Township, Board, Davis and Arndt from taking any action to enforce the foregoing provisions against Plaintiffs, and
- e) Awarding Compensatory damages, and
- f) Awarding punitive damages against the individual defendants in their individual capacities; and
- g) Awarding attorneys fees and costs pursuant to [42 U.S.C. §1988](#); and

h) Ordering such other and further relief as the Court deems just and proper.

COUNT IV - Deprivation of Right of Association  
42 U.S.C. § 1983

71. (Against the Township of O'Hara, the Zoning Hearing Board of O'Hara Township, O'Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

72. Plaintiffs incorporate by reference the averments contained in all of the previous Paragraphs as if set forth at length.

73. Plaintiffs incorporate the averments contained in the previous paragraphs as if set forth at length.

74. Defendants' unlawful actions impose an undue burden on Plaintiffs' right to association by specifically prohibiting Plaintiffs from associating with their guests in their home for cultural evenings called house concerts.

75. Defendants' unlawful actions, violate the right of association that is secured to Plaintiffs by the First and Fourteenth Amendment of the United States Constitution.

76. Defendants' actions prohibiting Plaintiffs from associating together for cultural reasons, by inviting guests to her home to play and hear music, is not narrowly tailored to serve a compelling state interest sufficient to justify this burden.

77. Defendants have, therefore, violated 42 U.S.C. §1983 which proscribes the unlawful actions taken by them.

WHEREFORE, Plaintiffs request the following relief:

- a) A judgment declaring Defendants' actions to enforce the Ordinance discriminatory, unconstitutional, arbitrary, unreasonable, and unlawful;
- b) A preliminary and permanent injunction enjoining defendants from taking

any and all enforcement action against Plaintiffs arising out of its use of the subject property for musical gatherings;

- b) Compensatory damages,
- c) Punitive damages against the individual defendants in their individual capacities
- d) An award of attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- e) Such other and further relief as the Court deems just and proper.

COUNT V - Deprivation of Right of Freedom of Speech  
42 U.S.C. § 1983

(Against the Township of O'Hara, the Zoning Hearing Board of O'Hara Township, O'Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

78. Plaintiffs incorporate the averments contained in the previous paragraphs as if set forth at length.

79. Defendants' unlawful actions, impose an undue burden on Plaintiffs' right to freedom of speech by specifically prohibiting Plaintiffs' from communicating with others through words and music, that is secured to Plaintiffs by the First and Fourteenth Amendment of the United States Constitution.

80. The Defendants' unlawful actions impose an undue burden on the Plaintiffs' right to freedom of speech by specifically prohibiting Plaintiffs from making and hearing music with others, that is secured to Plaintiffs by the First and Fourteenth Amendment of the United States Constitution.

81. Defendants' unlawful actions violate Cindy Harris' right to maintain her web site where she expressed her views on music, musicians, and a variety of other matters, which

is a right secured to Ms. Harris by the First and Fourteenth Amendment of the United States Constitution.

82. Defendants' unlawful actions violate Plaintiff Harris' right to speak with the press for publication, secured to Plaintiff by the First and Fourteenth Amendment of the United States Constitution.

83. Defendants' actions prohibiting Plaintiffs from inviting guests to their home for house concerts is not narrowly tailored to serve a compelling state interest sufficient to justify this burden.

WHEREFORE, Plaintiffs request the following relief:

- a) A judgment declaring Defendants' actions to enforce the zoning ordinance discriminatory, unconstitutional, arbitrary, unreasonable, and unlawful;
- b) A preliminary and permanent injunction enjoining Defendants from taking any and all enforcement action against Plaintiffs arising out of the use of the subject property for musical gatherings.
- c) Compensatory damages,
- d) Punitive damages against the individual defendants in their individual capacities;
- e) An award of attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- f) Such other and further relief as the Court deems just and proper.

COUNT VI - Deprivation of Right of Privacy  
42 U.S.C. § 1983

(Against the Township of O'Hara, the Zoning Hearing Board of O'Hara Township, O'Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

84. Plaintiffs incorporate by reference the averments contained in all of the previous Paragraphs as if set forth at length.

85. The integrity and privacy of the home and life within the home is something so fundamental that it has been found to draw its protection from the principles of more than one explicitly granted Constitutional right. It is said that the Third, Fourth and Fifth Amendments to the U.S Constitution protect against all governmental invasions of the sanctity of a person's home and the privacies of life within.

86. Defendants' unlawful actions in prohibiting Plaintiff-Homeowners' musical gatherings impose an undue burden on Plaintiffs-Homeowners' right to privacy and the privacies of life within their home.

87. Defendant's blanket prohibition of these gatherings is not narrowly tailored to serve a compelling state interest sufficient to justify the burden placed on Plaintiff-Homeowners' right to privacy in their home.

WHEREFORE, Plaintiffs request the following relief:

- a. A judgment declaring Defendants' actions to enforce the Ordinance discriminatory, unconstitutional, arbitrary, unreasonable, and unlawful;
- b. A preliminary and permanent injunction enjoining defendants from taking any and all enforcement action against Plaintiffs arising out of its use of the Subject Property for musical gatherings.
- c. Compensatory damages,
- d. Punitive damages against the individual defendants in their individual capacities;
- e. An award of attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- f. Such other and further relief as the Court deems just and proper.

COUNT VII - Deprivation of Substantive Due Process  
42 U.S.C. § 1983

(Against the Township of O'Hara, the Zoning Hearing Board of O'Hara Township, O'Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

88. Plaintiffs incorporate by reference the averments contained in all of the previous Paragraphs as if set forth at length.

89. A municipal land use decision violates substantive due process when it infringes on a fundamental interest, such as the constitutionally protected rights of free speech, association and privacy, and it can be characterized as arbitrary or conscience shocking in the constitutional sense.

90. Here, the zoning regulations were enforced with an intent to restrict Plaintiffs' constitutional rights to privacy, free association and speech, by prohibiting musical gatherings in the home of the Plaintiff-Homeowners and by forcing Cindy Harris to shut down her website, and refrain from speaking to the press.

91. A special respect for individual liberty in the home has long been part of our culture, and the Defendants' actions constraining Plaintiff-Homeowner's ability to speak and associate with others within their own home requires substantive due process protection because it is arbitrary and conscience-shocking in the constitutional sense.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- a) Declaring that the April, 2003 Findings of Fact and Conclusions of Law of the Board are null and of no effect; and
- b) Declaring that the February, 2003 Enforcement Notice of Zoning Violation issued by the Zoning Officer is null and of no effect.

- c) Enjoining Defendants Township, Board, Council, Davis and Arndt from taking any action to enforce the Enforcement Notice or Findings of Fact and Conclusions of Law,
- d) Awarding compensatory damages, and
- e) Awarding punitive damages against the individual defendants in their individual capacities; and
- f) Awarding attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- g) Ordering such additional relief as the Court deems just and proper.

COUNT VIII -Violation of Equal Protection  
42 U.S.C. § 1983

(Against the Township of O’Hara, the Zoning Hearing Board of O’Hara Township, O’Hara Township Council, Cindy L. Davis and Douglas C. Arndt)

92. Plaintiffs incorporate by reference the averments contained in all of the previous Paragraphs as if set forth at length.

93. Defendants’ have intentionally treated Plaintiff-Homeowners differently from others similarly situated and there is no rational basis for the difference in treatment.

94. Plaintiff-Homeowners have been prosecuted for using their residence in the same manner as other homeowners in the Township use their residence, and there is no rational basis for the difference in their treatment.

95. Plaintiff-Musicians have also been treated differently than other individuals invited into private homes in the Township.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- a) Declaring that the April, 2003 Findings of Fact and Conclusions of law of the Board are null and of no effect; and
- b) Enjoining Defendants Township, Board, Council, Davis and Arndt from taking any action to enforce the foregoing provisions against Plaintiffs, and
- c) Awarding compensatory damages, and
- d) Awarding punitive damages against the individual defendants in their individual capacities;
- e) Awarding attorneys fees and costs pursuant to 42 U.S.C. §1988; and
- f) Ordering such other and further relief as the Court deems just and proper.

Respectfully Submitted:

/s/ Margaret J. Fried  
Margaret J. Fried  
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