

U.S. DISTRICT COURT  
EASTERN DISTRICT - WI  
**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

**MICHAEL FOHT,**

'08 FEB -8 jP12 :39

Plaintiff,

v.

**VILLAGE OF KEWASKUM, RICHARD  
L. KNOEBEL, in his official capacity as  
Chief of Police of the Village of  
Kewaskum, and ROBERT A.  
BUDDENHAGEN, individually and in his  
official capacity as police officer.**

Defendants.

**08-C-0136**  
CIVIL ACTION NO.: \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY RELIEF AND  
DAMAGES PURSUANT TO  
42 U.S.C. § 1983**

Comes now Michael Foht, Plaintiff in this cause, and avers the following:

**INTRODUCTION**

1. This is a civil rights action challenging defendants' ordinance that bans various types of literature distribution in the Village of Kewaskum, Wisconsin.

2. Plaintiff Michael Foht seeks injunctive relief, declaratory relief, and damages, pursuant to 42 U.S.C. §§ 1983 and 1988, against Defendants Village of Kewaskum, Richard L. Knoebel, in his official capacity as Chief of Police for the Village of Kewaskum, and Officer Robert A. Buddenhagen, individually and in his official capacity as police officer.

3. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights of due process, free speech, equal protection, and free exercise by the Defendants named herein.

4. Defendants' actions have deprived and will continue to deprive Plaintiff

Michael Foht of his paramount rights and guarantees provided under the United States Constitution.

5. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and municipal authority.

**JURISDICTION AND VENUE**

6. This action raises federal questions under the United States Constitution, namely the First and Fourteenth Amendments, and under federal law, 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988.

7. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

8. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3); the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202; and Plaintiff's prayer for relief regarding costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

9. Venue is proper in the District Court of the Eastern District of Wisconsin, pursuant to 28 U.S.C. § 1391(b), because the claims arise in this district and the Defendants reside in this district.

**PLAINTIFF**

10. Plaintiff Michael Foht ("Mr. Foht") resides in Green County, Wisconsin.

**DEFENDANTS**

11. Defendant Village of Kewaskum is a municipal governmental authority, a subdivision of the State of Wisconsin.

12. Defendant Richard L. Knoebel (“Chief Knoebel”) is the Chief of Police for the Village of Kewaskum. In his official capacity, he is responsible for the enforcement of the Village of Kewaskum’s laws and ordinances. Chief Knoebel is sued in his official capacity.

13. Defendant Officer Robert A. Buddenhagen (“Officer Buddenhagen”) is a police officer with the Village of Kewaskum in Kewaskum, Wisconsin. In his official capacity, he enforces the laws and ordinances pertaining to the Village of Kewaskum. Officer Buddenhagen is sued in both his official and individual capacities.

### **FACTS**

14. Mr. Foht is a professing Christian and a traveling evangelist for his religious beliefs. As a tenet of his faith, Mr. Foht believes he is discharging a religious duty by publicly proclaiming and communicating his faith and convictions to others.

15. In order to discharge this duty, Mr. Foht travels to cities all over the country and speaks in open areas and passes out information concerning his beliefs. He often places information about his religious beliefs at the door of homes and on parked cars.

16. Mr. Foht uses literature distribution because it is an inexpensive and effective way to communicate his message to large numbers of people. Mr. Foht believes it is important to leave information at a person’s house or car, because that way, the information will most likely be seen by a resident or car owner. By placing literature at each home or car, Mr. Foht knows that he has communicated to everyone in an entire area without reduplication or without skipping over a certain segment of a city.

17. For Mr. Foht, there is simply no practical alternative to literature distribution. Other expressive mediums like television, radio, newspaper advertisements, and billboards are too expensive. And Mr. Foht cannot afford to send literature through the mail or to print CDs or tapes.

18. Frequently, Mr. Foht likes to hand out bibles to individuals. Mr. Foht believes the bible is God's word and is a vital part of Mr. Foht's desired expression.

19. Mr. Foht's message is one of hope and salvation that that he believes his particular religion extends. Mr. Foht attempts to evangelize and witness to others about the benefits of his faith. Mr. Foht also addresses current social and political topics from his particular religious perspective, including but not limited to the issue of homosexual conduct.

20. Mr. Foht does not seek monetary gain by his expressive activity. He does not try to sell products or services or ask for money. He does not elicit signatures or membership to any organization. Mr. Foht merely wishes for others to be exposed to his religious beliefs, and he hopes to facilitate dialogue and encourage others to contemplate moral issues of the day.

21. Mr. Foht has no intent to physically touch or harass anyone, or encourage violence, or express himself in any way other than in a peaceful manner. He has no intent to encroach upon the private property of any person or entity, or invade anyone's privacy or engage in speech activities in any area other than by offering literature to pedestrians or by placing information at the doorway of a person's residence or on a person's car.

22. So as to avoid unnecessary and, perhaps, even unpleasant confrontations, Mr. Foht does not typically address individuals personally. Instead, He leaves information with them, either at homes or on cars, so they can review and consider the contents. Mr. Foht leaves contact information in case they wish to engage in dialogue about the things mentioned in the materials.

23. On April 25, 2007, Mr. Foht went to the Village of Kewaskum in order to distribute flyers about his religious beliefs. He began around 8:00 a.m. and went to various residences and secured religious flyers to the front door handles of residences.

24. At approximately 12:45 p.m., Mr. Foht put a flyer on a door of a resident who then called the local police and complained about Mr. Foht's activity. In response, Police Officer Robert Buddenhagen arrived and interviewed the gentleman who called.

25. Officer Buddenhagen then spoke with Mr. Foht. Officer Buddenhagen explained that the police had received complaints about Mr. Foht's activities. Officer Buddenhagen advised Mr. Foht to only give pamphlets to people who were home and wanted them. Officer Buddenhagen went on to explain that a local ordinance may in fact prohibit Mr. Foht's activities. But Officer Buddenhagen said that he needed to check the substance of the ordinance to make sure.

26. In response, Mr. Foht objected that he did not want to knock on doors because that could cause unnecessary confrontations. Mr. Foht also explained that he had been allowed to distribute literature on doorways in other cities. Mr. Foht even explained that it would be unconstitutional to prevent him from distributing literature.

27. To avoid any conflict, Mr. Foht left the area and drove in his car to another neighborhood in the Village of Kewaskum. And he began to distribute literature on the door handles of residences in this neighborhood.

28. At approximately 1:25 p.m., however, Officer Buddenhagen found Mr. Foht and again confronted him.

29. Officer Buddenhagen confirmed that he was correct regarding his memory about the local ordinance. A local ordinance did indeed ban Mr. Foht from distributing his religious literature on the door handle of houses. As a result, as Officer Buddenhagen explained, Mr. Foht must stop distributing his literature.

30. Mr. Foht asked to see a copy of the ordinance and Officer Buddenhagen provided him with a copy of § 58-41 of the municipal code of the Village of Kewaskum. This section is entitled “Handbills, distribution and posting of” and reads as follows:

(a) Distribution. No person shall distribute any printed matter or literature on public or private property or place the same on motor vehicles.

(b) Posting. No person shall post any printed matter or literature on public or private property without the consent of the owner thereof. Any printed material posted to advocate the candidacy of any person for public office or to influence the vote on any referendum proposition shall be removed within 30 days of the election. The person posting or causing to be posted any such materials shall be responsible for its removal.

(c) Exceptions. This section shall not apply to the distribution of handbills to persons willing to accept such handbills, nor to the delivery of the United States mail, telegrams, messenger services and the delivery of newspapers on regular newspaper routes.

31. Officer Buddenhagen relied on § 58-41 to prohibit Mr. Foht from distributing literature at residences.

32. Mr. Foht read § 58-41 and realized that § 58-41 did, in fact, prohibit him

from distributing literature at residences. It also prohibited Mr. Foht from placing literature on vehicles. Even further, Mr. Foht noticed that § 58-41 prohibited him from distributing bibles on public ways in Kewaskum.

33. Mr. Foht asked Officer Buddenhagen what would happen if he violated the ordinance and continued to distribute literature. Officer Buddenhagen replied that Mr. Foht would be fined a minimum of \$172.00 every time he violated the ordinance and that Mr. Foht would eventually be arrested and sent to jail.

34. For fear of citation and arrest, Mr. Foht complied with Officer Buddenhagen demands and ceased engaging in any desired expressive activity anywhere in Kewaskum.

35. In an effort to resolve the situation, Mr. Foht then contacted Chief Knoebel, the police chief for the Village of Kewaskum, about Mr. Foht's religious expression in Kewaskum. Chief Knoebel referred Mr. Foht to the village attorney who did not return Mr. Foht's calls.

36. Mr. Foht has not returned to speak or distribute literature in Kewaskum since his ouster in April of 2007. As a result of his ouster and the repeated threats of citation and arrest, Mr. Foht has given up any hope of distributing literature or expressing his beliefs anywhere in Kewaskum.

37. Kewaskum's ordinance completely bans Mr. Foht's attempts to distribute any printed matter other than wanted handbills. In addition to deterring his activity of distributing pamphlets at houses, Mr. Foht is also deterred from placing literature on cars, even though he wishes to place literature on car windshields in Kewaskum.

38. Mr. Foht cannot discern when a handbill is wanted or unwanted because home and car owners usually do not express their preferences about handbills explicitly. For example, car owners and homeowners do not usually use signs that say handbills are wanted or unwanted. Mr. Foht cannot ask car owners and homeowners about their preferences because they are not present. And Mr. Foht cannot tell merely by looking, whether a pedestrian wants a handbill. The practical result of Kewaskum's ban on unwanted handbills is that Mr. Foht can never distribute any handbill.

39. Mr. Foht is likewise deterred from handing out bibles on public ways in the Village of Kewaskum.

40. Because Kewaskum's ordinance effectively bans Mr. Foht's activities in their entirety, there is no alternative way for Mr. Foht to reach his intended audience. Therefore, Mr. Foht's message remains unspoken in Kewaskum.

41. Mr. Foht still strongly desires to share his religious message in Kewaskum. Specifically, Mr. Foht desires to distribute bibles, handbills, and similar literature on the doorknobs of houses, place literature on cars, and pass out bibles, pamphlets and similar literature and speak in public ways in Kewaskum. Mr. Foht would do all these activities and wishes to do these activities as soon as possible, but he is chilled and deterred from expressing his message for fear of citation and/or arrest.

42. The impact of deterring Mr. Foht from exercising his constitutional rights in the Village of Kewaskum constitutes irreparable harm to Mr. Foht.

43. Mr. Foht does not have an adequate remedy at law for the loss of his constitutional rights.

## CAUSES OF ACTION

44. Kewaskum Code Ordinance § 58-41 on its face acts as a prior restraint on speech, invites arbitrary and unfettered discretion on behalf of government officials, and is discriminatory and overbroad as construed and applied to the individual speech of Mr. Foht, as it concerns literature distribution. As such, the ordinance is a violation of Mr. Foht's right to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

45. Kewaskum Code Ordinance § 58-41 on its face acts as a prior restraint on Mr. Foht' religious activity and expression, invites arbitrary and unfettered discretion on behalf of government officials, and is discriminatory and overbroad as construed and applied to the individual religious activity and expression of Mr. Foht. As such, the ordinance is a violation of Mr. Foht's right to free exercise of religion under the First and Fourteenth Amendments to the United States Constitution.

46. Kewaskum Code Ordinance § 58-41 on its face acts as a prior restraint, invites arbitrary and unfettered discretion on behalf of government officials, and is discriminatory and overbroad as construed and applied to the individual speech and activity of Mr. Foht. As such, the ordinance is a violation of Mr. Foht's right to due process under the Fourteenth Amendment to the United States Constitution.

47. Kewaskum Code Ordinance § 58-41 on its face acts as a prior restraint, invites arbitrary and unfettered discretion on behalf of government officials, and is discriminatory and overbroad as construed and applied to the individual speech of Mr. Foht, and thus unequally applied. As such, the policy is a violation of Mr. Foht's right to equal protection under the Fourteenth Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Michael Foht respectfully requests the following relief:

A. That this Court enter a declaratory judgment stating that Village of Kewaskum Code Ordinance § 58-41, “Handbills, distribution and posting of” is facially unconstitutional and violative of Plaintiff’s rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. That this Court enter a declaratory judgment stating that the Village of Kewaskum Code Ordinance § 58-41, “Handbills, distribution and posting of” is unconstitutional as applied to Plaintiff Michael Foht’s religious speech and violative of Plaintiff’s rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

C. That this Court enter a preliminary and permanent injunction enjoining Defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from enforcing and applying Village of Kewaskum Code Ordinance § 58-41 or any other policy or ordinance used to restrict constitutionally-protected speech in the Village of Kewaskum;

D. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

E. That this Court award Plaintiff Michael Foht actual damages for injuries sustained in this matter;

F. That this Court award Plaintiff Michael Foht nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights at

stake;

G. That this Court award Plaintiff Michael Foht his costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

H. That this Court grant such other and further relief as this Court deems equitable and just.

**VERIFICATION OF COMPLAINT**

I, Michael Foht, a citizen of the United States and a resident of Monroe, Green County, Wisconsin, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

  
\_\_\_\_\_  
MICHAEL FOHT

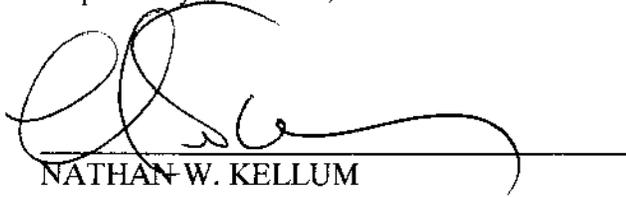
STATE OF Wisconsin  
COUNTY OF Green

On this 2nd day of February, 2008, before me, a Notary Public of the State and County aforesaid, personally appeared Michael Foht, to me known (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he executed the foregoing instrument for the purpose therein contained.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
7/27/08

Respectfully submitted,



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