

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Michael Marcavage 62 E. Stewart Avenue Lansdowne, PA 19050 Delaware (b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) C. Scott Shields, Esquire (610) 892-7777 Shields & Hoppe, LLP 223 N. Monroe Street, Media, PA 19063	DEFENDANTS Borough of Lansdowne Council, et al. 12 E. Baltimore Avenue Lansdowne, PA 19050 Delaware County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
--	---

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> <td></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> <td></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> <td></td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4		Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	
PTF	DEF	PTF	DEF														
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4															
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5															
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6															

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1331 and 1343

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 8/31/05

SIGNATURE OF ATTORNEY OF RECORD C. Scott Shields

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 62 E. Stewart Avenue, Lansdowne, Delaware County, Pennsylvania 19050

Address of Defendant: 12 E. Baltimore Avenue, Lansdowne, Delaware County, Pennsylvania 19050

Place of Accident, Incident or Transaction: 12 E. Baltimore Avenue, Lansdowne, Delaware County, Pennsylvania 1905
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, C. Scott Shields, Esquire, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought

DATE: 8/31/05

C. Scott Shields
Attorney-at-Law

68837

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

UNITED STATES DISTRICT COURT

APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 62 E. Stewart Avenue, Lansdowne, Delaware County, Pennsylvania 19050

Address of Defendant: 12 E. Baltimore Avenue, Lansdowne, Delaware County, Pennsylvania 19050

Place of Accident, Incident or Transaction: 12 E. Baltimore Avenue, Lansdowne, Delaware County, Pennsylvania 19050

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

I, C. Scott Shields, Esquire

(Check appropriate Category)

counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: 8/31/05

Attorney-at-Law

68837

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Michael Marcavage	:	CIVIL ACTION
	:	
v.	:	
Borough of Lansdowne Council, et al.	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

8/31/05	C. Scott Shields, Esquire	Plaintiff, Michael Marcavage
Date	Attorney-at-law	Attorney for
(610) 892-7777	(6100 892-7525	SShields@aol.com.
Telephone	FAX Number	E-Mail Address

TJS

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL MARCAVAGE,

Plaintiff

v.

***Borough of Lansdowne Council, Norman Council,
Former President, Gene Wayne, William Smith, Laura
Fryer, Elliott Borgman, Ann Hill and Kevin Lee,
Members of Council, in their Official And individual
capacities***

Defendants

CIVIL ACTION
No. 05-cv-4747

COMPLAINT AND DEMAND FOR JURY TRIAL

AND NOW, Plaintiff, Michael Marcavage, by his attorneys, Shields & Hoppe, LLP, hereby files the following Complaint and Demand for Jury Trial and assigns the following in support thereof:

INTRODUCTION

1. Plaintiff, Michael Marcavage, files this Complaint seeking injunctive and declaratory relief in aid of his constitutional rights to free speech, equal protection under the law and other civil rights guaranteed by the United States and Pennsylvania Constitutions and other civil rights laws.

2. On July 21, 2004, while attending a regularly scheduled meeting of the Borough of Lansdowne Council, Mr. Marcavage rose to speak during the open comment time. Mr. Marcavage intended to discuss prior public comments made by Defendant Kevin Lee, a Member of Council, as reported in the Philadelphia Gay News. However, when, as part of his talk, Mr. Marcavage began to read a passage from the Bible, Defendant, Norman Council, then Council

President, told Mr. Marcavage that his time was up and that he would not be permitted to read the Bible as it would be tantamount to engaging in hate speech.

When Mr. Marcavage asserted that he had the right to speak, Defendant Norman Council adjourned the meeting and the Defendant Council Members left the room. When Mr. Marcavage continued to assert his right to speak he was forcefully removed from the meeting and charged with disrupting a public meeting and disorderly conduct. After Mr. Marcavage was forcefully removed from the meeting room Defendants resumed the meeting.

3. Mr. Marcavage alleges that Defendants' refusal to allow him the same opportunity to speak as afforded other citizens of the Borough of Lansdowne and Defendants' demand that Mr. Marcavage stop speaking, the adjournment of the meeting when he asserted his right to speak, and the subsequent filing of criminal charges against him, violated Mr. Marcavage's right to free speech, his right to free exercise of his religious beliefs and of his conscience and his right to equal protection under the law.

4. Mr. Marcavage is seeking an Order declaring that Defendants' actions violated his right to free speech, free exercise of religious beliefs and equal protection and enjoining Defendants from such conduct in the future. Mr. Marcavage is further seeking an award of compensatory and punitive damages, attorneys' fees and costs.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §1331 and 1343. Supplemental jurisdiction is supplied *via* 28 U.S.C. §1367 for claims arising under the state constitution. Jurisdiction for the request of declaratory relief is provided by 28 U.S.C. §2201 and 2202.

6. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. §1391(b) because the claims arise in this district and the Defendants reside in this district.

PARTIES

7. Plaintiff, Michael Marcavage, is an adult individual who resides within the Borough of Lansdowne, Pennsylvania.

8. Defendants, Norman Council, Former President, Gene Wayne, William Smith, Laura Fryer, Elliott Borgman, Ann Hill and Kevin Lee, are former and/or current elected members of the Borough of Lansdowne Council. Defendants are sued in their official and individual capacities.

STATEMENT OF FACTS

9. The Borough of Lansdowne, is located in Delaware County, Pennsylvania.

10. The Borough is governed by a Mayor and a Borough Council who are elected by the residents of the Borough.

11. The Borough Council holds meetings on the third Wednesday of each month, which are open to the general public.

12. As part of each meeting, the council has an open comment period during which citizens of the Borough can comment about any matter of concern to them that they would like the Council to address.

13. This open comment period is mandated by state law, 65 Pa.C.S. §710.1 which requires that at every meeting of a Board such as the Borough of Lansdowne Council, there be an opportunity for residents to comment on matters of concern, official action or deliberation which are or may be before the board or council.

14. In or about January, 2004, Defendant, Kevin Lee, was appointed by the Borough of Lansdowne Council to fill a vacancy that had occurred on the Council.

15. After his appointment, Defendant Lee, who is openly homosexual, was quoted in the Philadelphia Gay News as stating:

“The gay community and the Borough Council hope this [his appointment] will lead to more gay and lesbian people moving to town.”

July, 2004 Borough Council Meeting

16. On July 21, 2004, Mr. Marcavage attended the regularly scheduled Borough Council meeting.

17. After the general business was completed, then Council President, Norman Council announced that he was going to open up the floor for general comments from the residents of the Borough.

18. A Motion was then made to suspend the Rules of Order which was unanimously passed by the Council.

19. Individuals in the audience then stood up to be recognized and to speak to the Council. There were no announced restrictions of topics that could be discussed. There was also no announced time limit and some speakers spoke for a short period of time while others spoke for up to approximately 8 minutes.

20. There were a wide range of topics discussed including cars being illegally parked, the need for new recreational facilities, newspaper articles about the Borough and the new siren at the fire station.

21. Mr. Marcavage got up to speak and advised Defendants that he wanted to address the direction in which the Council was leading the community. He referred specifically to the comments attributed to Defendant Lee reported in the Philadelphia Gay News article.

22. When Mr. Marcavage began to discuss his concerns about Council promoting the Borough as wanting to attract homosexuals, something that Defendant Lee was quoted as confirming the Borough would be doing, Defendant Norman Council told Mr. Marcavage that "we aren't going to have this discussion".

23. Mr. Marcavage then advised the Council that he was going to read a passage from the Bible and then sit down. However, Defendant Council refused to allow him to do so, even when Mr. Marcavage stated that he was going to read the passage and then sit down without further comment.

24. Defendant Council then told Mr. Marcavage that his time to speak was up and that he was not going to allow Mr. Marcavage to come before the Council and use it as a forum to engage in hate speech (i.e. by reading from the Bible).

25. When Mr. Marcavage stated that the Bible was not hate speech, Defendant Council stated that "your [Mr. Marcavage] twisting of it is". Mr. Marcavage then stated that he would just read it [the scripture passage] as it is.

26. Defendant Council then, in a final act to deny Mr. Marcavage of his right to speak, requested a Motion to adjourn the meeting. The Motion was made and passed and Defendant Council, along with several other council members, got up and left the room.

27. The total amount of time that passed from the time Mr. Marcavage rose to speak and when the meeting was adjourned by Defendants was approximately two and one-half minutes.

Mr. Marcavage is Forcibly Removed From Meeting Room

28. At this point, Chief Daniel Kortan, the Chief of Police for the Borough of Lansdowne, approached Mr. Marcavage and told him that he was going to have to leave. Mr. Marcavage believes, and therefore avers, that Chief Kortan removed Mr. Marcavage at the direction of Defendant Borough Council.

29. Mr. Marcavage stated that he was not going to leave, that he had the right to address the Borough Council.

30. Chief Kortan then forcefully removed Marcavage from the room. Mr. Marcavage was subsequently criminally charged with disrupting a public meeting and disorderly conduct.

31. While he was being led from the meeting room by Chief Kortan, Mr. Marcavage was assaulted by Defendant Elliott Borgman who struck him on the arm.

32. Chief Kortan then forced Mr. Marcavage into an elevator. While inside the elevator, Chief Kortan verbally abused Mr. Marcavage and continued to do so when they exited the elevator at the ground floor. Chief Kortan demanded that Mr. Marcavage leave the Lansdowne Borough Hall.

33. After being subjected to public scrutiny arising from the criminal charges and having to incur counsel fees and costs defending himself through a preliminary hearing, formal arraignment, pretrial conferences, the Delaware County District Attorney's office, prior to arguing Motions, voluntarily dismissed the charges as being without merit.

Borough Seeks to Limit Speech

34. In direct response to Mr. Marcavage's attempt to exercise his right to speak at the Council meeting, Defendant Borough Council took action to limit the time that a resident may speak during the open comment period.

35. This action was clearly taken in an effort to further interfere with Mr. Marcavage's right to free speech.

36. In a further effort to seek to silence Mr. Marcavage, Defendants also proposed an ordinance which would have limited the rights of people seeking to gather in a group and exercise their First Amendment right to free speech within the Borough.

Borough Council Members Vilify Mr. Marcavage

37. After the incident at the July 21, 2004 Borough meeting, Borough members engaged in a course of conduct designed to publicly vilify Mr. Marcavage for his attempt to exercise his right to free speech at the Borough Council meeting. For example:

- i. In an email sent on October 17, 2004, Defendant Norman Council stated that Mr. Marcavage's behavior (referring to his attempt to exercise his right to free speech) was consistent with that of habitual criminals.
- ii. In a letter to the Editor of the Delaware County Daily Times dated August 30, 2004, Defendant Wayne accused Mr. Marcavage of having an agenda of hatred and intolerance.
- iii. In a letter to the Editor of the Delaware County Daily Times Defendant Lee accused Mr. Marcavage of religious intolerance, homophobia, having general ignorance of the 21st century and engaging in rambling rants.

- iv. In an article in the Philadelphia Gay News, Defendant Lee is quoted as calling Mr. Marcavage's talk "hate speech, pure and simple". Defendant Lee also accused Mr. Marcavage of threatening and annoying many members of the community with his views.
- v. In the same Philadelphia Gay News article, Defendant Norman Council accused Mr. Marcavage of engaging in hate speech.

38. It is clear that these attacks on Mr. Marcavage's character were intentionally designed to discredit Mr. Marcavage and to draw attention away from the illegal and unconstitutional actions of Defendants.

39. These attacks, however, also have the effect of damaging Mr. Marcavage's reputation and good name in the community.

FIRST CAUSE OF ACTION

VIOLATION OF RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

40. Plaintiff hereby incorporates paragraphs 1 through 39 above by reference as if same were set forth in their entirety hereat.

41. The Free Speech Clause, as set forth in the First Amendment to the United States Constitution, incorporated and made applicable to the states by the Fourteenth Amendment, provides for protection of speech and prohibits censorship of expression.

42. Defendants' policy and practice of cutting off Mr. Marcavage's speech, adjourning the meeting to prevent him from continuing to speak and then having him forcibly removed from the meeting and ultimately subjected to criminal charges, interfered with the exercise of his constitutionally protected right to free speech on the basis of the content of his speech, adversely affected his right to free speech.

43. Defendants' actions further interfered with his right to petition government.
44. No legitimate state interest existed to justify Defendants' actions.
45. Defendants' policies and practice act to violate Plaintiff's fundamental right to engage in free speech.
46. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer, emotional distress, mental anguish, humiliation, embarrassment,, harm to and/or loss of reputation in the community and loss of freedom and liberty.
47. Moreover, Defendants' actions have had the effect of deterring Plaintiff from exercising his fundamental right to free speech because of the fear that he will be arrested and subjected to further embarrassment and humiliation.
48. Defendants' actions as set forth above were committed with callous disregard of and/or indifference to Plaintiffs' rights and, therefore, an award of punitive damages is proper.

SECOND CAUSE OF ACTION

VIOLATION OF EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

49. Plaintiff hereby incorporates paragraphs 1 through 48 above by reference as if same were set forth in their entirety hereat.
50. The Equal Protection Clause, as set forth in the Fourteenth Amendment to the United States Constitution, provides for the right to be treated equally under the law.
51. Defendants' treated Plaintiff disparately when they refused to allow Plaintiff to have a full and fair opportunity to speak during the open comment time while permitting other individuals to do so, without any restriction.

52. Defendants' policies and practices in censoring Plaintiffs' speech based on its content while allowing other individuals to speak without restriction resulted in Plaintiff being treating as a second class citizen in the community.

53. No legitimate state interest existed to justify Defendants' actions.

54. Defendants' policies and practice act to violate Plaintiff's fundamental right to equal protection under the law.

55. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer, mental anguish, humiliation, embarrassment and loss of reputation in the community.

56. Defendants' actions as set forth above were committed with callous disregard of and/or indifference to Plaintiffs' rights and, therefore, an award of punitive damages is proper.

THIRD CAUSE OF ACTION

DENIAL OF RIGHT TO PROTECT REPUTATION

57. Plaintiff hereby incorporates paragraphs 1 through 56 above by reference as if same were set forth in their entirety hereat.

58. Defendants' actions have directly and proximately harmed Plaintiff's reputation and standing in the community in violation of Article I, Section 1 of the Pennsylvania Constitution.

59. Defendants' censorship of Plaintiff's speech, their labeling of Plaintiff's speech as "hate speech" thereby referring to him as a "hater", and the ejection of Plaintiff from the meeting and subsequent being subjected to criminal charges were reported in public newspaper accounts to the detriment of Plaintiff's reputation.

60. Defendants' actions as set forth above were outrageous and were committed with reckless indifference to Plaintiffs' rights and, therefore, an award of punitive damages is proper.

FOURTH CAUSE OF ACTION

***VIOLATION OF EQUAL PROTECTION OF THE LAW
UNDER THE PENNSYLVANIA CONSTITUTION***

61. Plaintiff hereby incorporates paragraphs 1 through 60 above by reference as if same were set forth in their entirety hereat.

62. Defendants' actions have directly and proximately deprived Plaintiff of equal protection of the law in violation of Article I, Sections 1 and 26 of the Pennsylvania Constitution, inasmuch as Plaintiff has been arbitrarily and capriciously singled-out for the application of such restriction upon his fundamental constitutional rights.

63. Defendants' actions as set forth above were outrageous and were committed with reckless indifference to Plaintiffs' rights and, therefore, an award of punitive damages is proper.

FIFTH CAUSE OF ACTION

***VIOLATION OF RIGHT TO FREE SPEECH UNDER THE
PENNSYLVANIA CONSTITUTION***

64. Plaintiff hereby incorporates paragraphs 1 through 63 above by reference as if same were set forth in their entirety hereat.

65. Defendants' policy and practice of cutting off Mr. Marcavage's speech, adjourning the meeting, forcefully removing him from the meeting, and then criminally charging him interfered with his exercise of his constitutionally protected right to free speech on the basis of the content of his speech, adversely affected his right to free speech as protected under Article I, Section 7 of the Pennsylvania Constitution.

66. Defendants' actions further interfered with his right to petition government.

67. No legitimate state interest existed to justify Defendants' actions.

68. Defendants' policies and practice act to violate Plaintiff's fundamental right to engage in free speech.

69. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer, mental anguish, humiliation, embarrassment and loss of reputation in the community.

70. Defendants' actions as set forth above were outrageous and were committed with reckless indifference to Plaintiffs' rights and, therefore, an award of punitive damages is proper.

SIXTH CAUSE OF ACTION

VIOLATION OF RIGHT TO FREEDOM OF CONSCIENCE/RELIGIOUS FREEDOM UNDER THE PENNSYLVANIA CONSTITUTION

71. Plaintiff hereby incorporates paragraphs 1 through 70 above by reference as if same were set forth in their entirety hereat.

72. Mr. Marcavage has a firmly held, sincere belief, based upon his religious faith, that a policy/practice of Defendant Borough Council to make the Borough a more friendly and welcoming place to gay and lesbian individuals is morally wrong.

73. Mr. Marcavage was, therefore, compelled as a matter of conscience to approach Defendant Borough Council with his concerns about this matter.

74. The Pennsylvania Constitution, Article 1, §3 protects individuals rights to freedom of religion and freedom of conscience.

75. Specifically, the Pennsylvania Constitution provides that no human authority can, in any case whatever, control or interfere with the rights of conscience.

76. Defendants' policy and practice of cutting off Mr. Marcavage's speech, adjourning the meeting, forcefully removing him from the meeting, and then criminally charging

him interfered with his exercise of his rights of conscience as protected under Article I, Section 3 of the Pennsylvania Constitution.

77. No legitimate state interest existed to justify Defendants' actions.

78. Defendants' policies and practice act to violate Plaintiff's fundamental right to freedom of conscience.

79. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer, mental anguish, humiliation, embarrassment and loss of reputation in the community.

80. Defendants' actions as set forth above were outrageous and were committed with reckless indifference to Plaintiffs' rights and, therefore, an award of punitive damages is proper.

SEVENTH CAUSE OF ACTION

DECLARATORY RELIEF

81. Plaintiff hereby incorporates paragraphs 1 through 80 above by reference as if same were set forth in their entirety hereat.

82. Defendants' have violated Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

EIGHTH CAUSE OF ACTION

DECLARATORY RELIEF

83. Plaintiff hereby incorporates paragraphs 1 through 82 above by reference as if same were set forth in their entirety hereat.

84. Plaintiff has no adequate remedy at law to prevent Defendants' violation of his constitutional rights to free speech, petitioning government and equal protection of the law.

85. Issuance of a permanent injunction against Defendants is necessary to prevent further violations of Plaintiff's rights.

PRAYER FOR RELIEF

Wherefore, Plaintiff, Michael Marcavage, prays for relief as follows:

1. That this Court assume jurisdiction over this action;
2. That this Court declare that Defendants' action in censoring Mr. Marcavage's speech and denying him a full and fair opportunity to address the Borough Council constitutes a violation of Mr. Marcavage's right to Free speech protected under the First Amendment to the United States Constitution as well as the Pennsylvania Constitution.
3. That this Court declare that Defendants' action in censoring Mr. Marcavage's speech and denying him a full and fair opportunity to address the Borough Council as was given to other individuals constitutes a violation of Mr. Marcavage's right to equal protection of the law protected under the Fourteenth Amendment to the United States Constitution as well as the Pennsylvania Constitution.
4. That this Court declare that Defendants' action in censoring Mr. Marcavage's speech and denying him a full and fair opportunity to address the Borough Council constitutes a violation of Mr. Marcavage's rights of conscience protected the Pennsylvania Constitution.
5. That this Court declare that Defendants' action of censoring Mr. Marcavage's speech and denying him a full and fair opportunity to address the Borough Council and then accusing Mr. Marcavage of engaging in hate speech constitutes

a violation of Mr. Marcavage's right to Free speech protected under the First Amendment to the United States Constitution as well as the Pennsylvania Constitution.

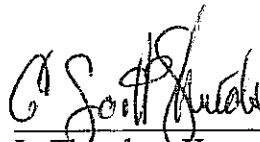
6. That this Court declare that Defendants' action in censoring Mr. Marcavage's speech and denying him a full and fair opportunity to address the Borough Council and then publicly accusing Mr. Marcavage of engaging in hate speech, accusing him of religious intolerance, having an agenda of hatred and intolerance and engaging in criminal behavior, damaged and caused harm to Mr. Marcavage's reputation in violation of his rights protected under the Pennsylvania Constitution.
7. That this Court issue a preliminary and permanent injunction enjoining Defendants from censoring Plaintiff's speech and requiring Defendants to give Plaintiff the same opportunity to address the Borough Council as is given to other individuals.
8. That this Court grant Plaintiff an award of compensatory damages in an amount deemed appropriate and just by this Court;
9. That this Court grant Plaintiff an award of punitive damages in an amount deemed appropriate and just by this Court;
10. That this Court 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;
11. That this Court grant to Plaintiff the reasonable costs and expenses of this action, including reasonable attorney's fees and expenses pursuant to 42 U.S.C. §1988; and

12. That this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted:

SHIELDS & HOPPE, LLP

By:



L. Theodore Hoppe, Jr., Esquire

Attorney I.D. No. 62082

C. Scott Shields, Esquire

Attorney I.D. No. 68837

Amanda L.H. Brinton, Esquire

Attorney I.D. No. 88882

223 N. Monroe Street

PO Box 23

Media, PA 19063

(610) 892-7777

(610) 892-7525 (fax)

Attorneys for Plaintiff

Date:

8/31/05

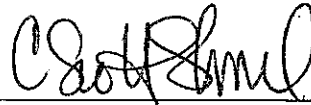
DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil procedure, Michael Marcavage hereby demands a trial by jury in this action of all issues so triable.

Respectfully submitted:

SHIELDS & HOPPE, LLP

By:



L. Theodore Hoppe, Jr., Esquire

Attorney I.D. No. 62082

C. Scott Shields, Esquire

Attorney I.D. No. 68837

Amanda L.H. Brinton, Esquire

Attorney I.D. No. 88882

223 N. Monroe Street

PO Box 23

Media, PA 19063

(610) 892-7777

(610) 892-7525 (fax)

Attorneys for Plaintiff

Date: 8/31/05

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL MARCAVAGE

v.

BOROUGH OF LANSDOWNE COUNCIL, NORMAN
COUNCIL, FORMER PRESIDENT, GENE WAYNE,
WILLIAM SMITH, LAURA FRYER, ELLIOTT BORGMAN,
ANN HILL AND KEVIN LEE, MEMBERS OF COUNCIL, IN
THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

CIVIL ACTION NO. 05-4747

TO: (NAME AND ADDRESS OF
DEFENDANT)

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

C. SCOTT SHIELDS, ESQ.
223 N. MONROE STREET
P.O. BOX 23
MEDIA, PA. 19063

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Michael E. Kunz, Clerk of Court

Date: SEPTEMBER 2, 2005

(By) Deputy Clerk

STEPHEN SONNIE

United States District Court
Eastern District Of Pennsylvania
United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106-1797

*Chambers of
James T. Giles
Chief Judge*

*Michael E. Kunz
Clerk of Court*

*Clerk's Office
Room 2609
Telephone
(215)597-7704*

NOTICE OF RIGHT TO CONSENT TO EXERCISE OF JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE

The district judges of this Court have found that the United States magistrate judges are experienced judicial officers who have regularly handled the disposition of hundreds of civil cases through motions and trials and are fully qualified to try any civil cases arising before this Court.

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that pursuant to Local Rules 72.1(h), the United States magistrate judges of this district, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgement. Appropriate consent forms for this purpose are available from the clerk of court.

Your decision to consent, or not to consent, to the referral of your case to a United States magistrate judge for disposition is entirely voluntary and should be communicated solely to the clerk of the district court. Only if all the parties in the case consent to the reference to a magistrate judge will either the judge or magistrate judge be informed of your decision. **If you decide to consent, your case will receive a date certain for trial.**

No action eligible for arbitration will be referred by consent of the parties until the arbitration has been concluded and trial *de novo* demanded pursuant to Local Rules 53.2, Paragraph 7. The Court may, for good cause shown, or on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge.

When a case is referred to a magistrate judge for all further proceedings, including the entry of final judgement, the final judgement shall be appealed directly to the Court of Appeals for the Third Circuit in the same manner as an appeal from any other judgement of a district court.

Nothing herein shall be construed to be a limitation of any party's right to seek review by the Supreme Court of the United States.

JAMES T. GILES
CHIEF JUDGE

MICHAEL E. KUNZ
CLERK OF COURT