

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**No. 16-3766**

NAPERVILLE SMART METER	)	
AWARENESS,	)	Appeal from the United States
	)	District Court for the Northern
Plaintiff-Appellant,	)	District of Illinois, Eastern Division
	)	
v.	)	District Court No. 1:11-cv-09299
	)	
CITY OF NAPERVILLE,	)	The Honorable John Z. Lee
	)	
Defendant-Appellee.	)	

**PLAINTIFF-APPELLANT’S AMENDED DOCKETING STATEMENT**

Plaintiff-Appellant, Naperville Smart Meter Awareness (“NSMA”), pursuant to Circuit Rule 3(c)(1) and this Court’s order entered October 27, 2016, hereby respectfully submits the following as its Amended Docketing Statement:

**I. District Court Jurisdiction**

The district court had subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal questions) and 28 U.S.C. § 1343 (civil rights) because NSMA raised claims against Defendant City of Naperville (the “City”) pursuant to 42 U.S.C. § 1983 for deprivations of NSMA members’ rights under the following constitutional provisions: (1) the Fourth Amendment’s prohibition on unreasonable searches, (2) the Fifth Amendment’s Takings Clause, (3) the Due Process Clause of the Fourteenth Amendment, and (4) the Equal Protection Clause of the Fourteenth Amendment. In addition to these direct constitutional claims, NSMA raised claims based on violations of two

federal statutes: the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, and the Public Utility Regulatory Policies Act of 1978 (“PURPA”), as amended by the Energy Policy Act of 2005, 16 U.S.C. §§ 2601–45. *See Wilson v. Warren Cty., Ill.*, 830 F.3d 464, 468 (7th Cir. 2016) (noting that a § 1983 claim requires “(1) the deprivation of a right secured by the Constitution or federal law and (2) that defendants were acting under color of state law”); *In re African-Am. Slave Descendants Litig.*, 471 F.3d 754, 757 (7th Cir. 2006) (“A claim based on a federal statute invokes the federal-question jurisdiction of the federal courts.”).

## II. Appellate Jurisdiction

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 because NSMA is appealing from a final decision of the district court. The district court entered final judgment against NSMA and in favor of the City on September 26, 2016, [Dist. Ct. Doc. No. 180], in conjunction with its grant of summary judgment to the City, also on September 26, 2016, [Dist. Ct. Doc. Nos. 178, 179]. NSMA did not file a post-judgment motion or other motion that would toll the period of time to file a notice of appeal, and instead timely filed its notice of appeal in the district court within thirty days after the entry of judgment, on October 26, 2016. *See Fed. R. App. P. 4(a)(1)(A)*.

As set forth in its notice of appeal, NSMA seeks review of the district court’s order granting the City summary judgment, upon which the court entered final judgment in the City’s favor, as well as all opinions and orders antecedent and ancillary thereto. *See Weiss v. Cooley*, 230 F.3d 1027, 1031 (7th

Cir. 2000); *Badger Pharmacal, Inc. v. Colgate-Palmolive Co.*, 1 F.3d 621, 624–26 (7th Cir. 1993). In particular, a number of NSMA’s claims were finally disposed of by the district court in orders ruling on Rule 12(b)(6) motions to dismiss filed by the City and a motion for leave to file a third amended complaint filed by NSMA. These orders were not appealable until the district court entered judgment in conjunction with its grant of summary judgment in the City’s favor on NSMA’s final remaining claim on September 26, 2016. In this appeal, NSMA seeks review of all opinions and orders issued antecedent and ancillary to the district court’s entry of judgment, including the following:

- Memorandum Opinion and Order, entered March 22, 2013, ruling on the City’s motion to dismiss NSMA’s first amended complaint, [Dist. Ct. Doc. No. 68];
- Memorandum Opinion and Order, entered September 25, 2014, ruling on the City’s motion to dismiss NSMA’s second amended complaint, [Dist. Ct. Doc. No. 92];
- Memorandum Opinion and Order, entered July 7, 2015, ruling on NSMA’s motion for leave to file a third amended complaint, [Dist. Ct. Doc. No. 117];
- Order, entered on March 3, 2016, granting the City’s motion to stay further discovery and denying NSMA’s motion to compel, [Dist. Ct. Doc. No. 175];
- Memorandum Opinion and Order, entered on September 26, 2016, granting the City’s motion for summary judgment, [Dist. Ct. Doc. No. 179]; and
- Judgment in a Civil Case, entered on September 26, 2016, [Dist. Ct. Doc. No. 180].

### **III. Appeal from a Final Judgment**

As noted above, this is an appeal from a final judgment entered September 26, 2016, that adjudicated all of the claims with respect to the parties, pursued by NSMA as a matter of right pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Circuit Rule 3(a).

### **IV. No Prior or Related Appellate Proceedings**

There have been no prior, related, or collateral appellate proceedings in relation to this case.

### **V. Additional Requirements of Circuit Rule 3(c)(1)**

This is a civil case that does not involve any criminal convictions. No designations under 28 U.S.C. § 1915(g) are relevant in this case.

There are no individual parties to the litigation appearing in an official capacity. None of the City's officers or employees were individually sued in their official capacity.

This case does not involve a collateral attack on a criminal conviction.

Dated: November 3, 2016

Respectfully submitted,

/s Robert H. Lang

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**CERTIFICATE OF SERVICE**

**Certificate of Service When All Case Participants Are CM/ECF Participants**

I hereby certify that on November 3, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Robert H. Lang



**CERTIFICATE OF SERVICE**

**Certificate of Service When Not All Case Participants Are CM/ECF Participants**

I hereby certify that on \_\_\_\_\_, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:

address:

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