UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHARLES PFLEGHAAR, *et al.*,	:	**Case No. 3:17-CV-1713**
	:	
Plaintiffs,	:	**Judge Helmick**
	:	
-vs-	:	**Magistrate Knepp**
	:	
CITY OF PERRYSBURG, OHIO, *et al.*,	:	
	:	**MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, AND MEMORANDUM IN SUPPORT THEREOF**
Defendants.	:	

Plaintiffs initiated this civil rights action on August 15, 2017 by filing a Verified Complaint challenging the official conduct, policies, practices, threats and intimidation by the City of Perrysburg and its key employees, whereby Defendants have unconstitutionally prevented and restrained Mr. Pfleghaar and his supporters from fully and meaningfully engaging in core political speech with their fellow citizens as to their electoral options in the midst of an election season.

I. INTRODUCTION

The First Amendment affords the broadest protection to political expression in order "to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, at 484 (1957).

Pursuant to these principles, Plaintiffs Chip Pfleghaar and Katina Holland hereby move, pursuant to Federal Rule of Civil Procedure 65(b), for issuance of a temporary restraining order and preliminary injunction enjoining the City of Perrysburg and its agents ("Perrysburg" or the "City") from engaging in further official conduct that interferes with Plaintiffs' protected political speech by prohibiting "political signs" other than during an arbitrary durational limit of 67 days before and after an election.

Through threatening to impose $100 per day fines on those who maintain political yard signs outside of the aforesaid window, Defendants undermine and frustrate, within just a few months of an

important election, Plaintiffs' efforts to effectively and efficiently communicate that Perrysburg voters have a meaningful choice as to who serves on their City Council. If Defendants' conduct prohibiting political speech through otherwise-compliant signage is not immediately enjoined, Plaintiffs will continue to suffer irreparable harm for which there is no adequate remedy at law.

Plaintiffs request that the requirement to give security pursuant to Rule 65(c) be waived.

II. BACKGROUND[1]

A. Plaintiffs' Expressive Activity

Plaintiff Chip Pfleghaar is a resident of the City of Perrysburg and currently an independent candidate for Perrysburg City Council. To help make his case to the public, Mr. Pfleghaar has designed and purchased campaign signs urging local residents to elect him to City Council. The signs innocuously indicate "Chip Pfelghaar for Council," and measure no greater than two feet wide by two feet tall. See Doc. 1, PageID 12.

These sign are currently displayed at Mr. Pfleghaar's home at 401 W. Front Street, in Perrysburg, Ohio. *Id.* If Mr. Pfleghaar is unsuccessful in his election, he intends to continue displaying the signs to communicate the need for change on city council and to communicate that he will be running in the next available election for City Council.

Mr. Pfleghaar has many supporters who display or wish to display signs seeking his election. For instance, Plaintiff Katina Holland supports Mr. Pfleghaar, but has refrained from displaying signs advocating for his election due to the City's prohibitions and threats.

B. The City of Perrysburg's Selective Prohibition on Political Signs

The City prohibits political signs 298 days of the year through (1) classifying them as "temporary;" and (2) prohibiting "temporary signs" on residential property at all times except "up to 60 days prior and 7 days after the event." See Doc. 1, PageID 15, citing Perrysburg Municipal Code Sections 1250.33(b) and 1250.33(c). Further, "[n]o more than two signs may display an identical message." *Id.* The City's code is

[1] All factual allegations within this Section are derived directly from Plaintiffs' August 15, 2017 Verified Complaint.

clear that "All signs not expressly permitted by this Code shall be prohibited." Doc. 1, PageID 15, citing Section 1250.35.

The City's enforcement and threatened enforcement of these Sections illuminates them and also demonstrates that, at minimum, the City maintains an unwritten policy of imposing durational limits on political signs for and against candidates and issues by characterizing them as "temporary" on the basis of their content. On or about July 17, 2017, zoning inspector Brodin Walters indicated to Mr. Pfleghaar that the City was "provid[ing] [him] with the following information to ensure that all political signs are placed legally." Doc. 1, PageID 19. This correspondence indicates that, in a residential area, "signs are permitted to be displayed 60 days prior to and 7 days after an election/ voting day." *Id.*

Mr. Pfleghaar sought to further clarify the City's policies through a follow-up email to Mr. Walters. In his response, Mr. Walters insisted as follows:

> In order to be in compliance with the current code your signs should come down until 60 days prior to the election. This timeline will be different for Mayoral candidates since they have a primary which allows their signs to go up ahead of council candidates. We wanted to send out the general letter to inform every candidate since you are not the only one that was not aware of the timing requirements for signs. We aren't specifically out targeting political signs but obviously we need to address them if we see them. There are basically 2 penalties, 1) if you put them in the right-of-way they will be taken and disposed of (so the penalty is losing the sign) and 2) if they are maintained on private property in violation of the size or time requirements there is the potential for a zoning **fine of $100 per day per violation**.

Doc. 1, PageID 20-21. In a subsequent email exchange, Mr. Walters further clarified the construction of the sign is immaterial, since "the real intent of the code as I see it is to allow display of election signs during a time that is relevant…" *Id.*

This policy of characterizing signs advocating for and against candidates as "temporary" so as to prohibit them for nearly 300 days of the year is further displayed by Mr. Pfleghaar's prior experience with the City of Perrysburg. On or about November 23, 2016, the City demanded that Mr. Pfleghaar remove his yard sign supporting the election of a presidential candidate, insisting as follows: "the presence of a political sign was noticed at the address above, for which you are the owner on record. I must inform you

that political signs are not permitted to be up longer than a 70 day period. In particular 7 days after the event, this would have been Election Day….I am requesting that the sign be removed as soon as possible….our office will ensure that the sign is removed…." Doc. 1, PageID 22. Despite a desire to speak out as to the outcome of the election through this signage, Mr. Pfleghaar removed the sign in response to the City's threat.

II. LAW AND ANALYSIS

> *In the free society ordained by our Constitution it is not the government, but the people individually as citizens and candidates and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a political campaign.*[2]

In determining whether to grant the present motion for issuance of a temporary restraining order and preliminary injunction, the Court is to consider four factors: (1) whether the movants have a strong likelihood of success on the merits; (2) whether the movants would otherwise suffer irreparable injury; (3) whether the issuance of a temporary restraining order or preliminary injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of a temporary restraining order or preliminary injunction. *McPherson v. Michigan High Sch. Athletic Ass'n*, 119 F.3d 453, 459 (6th Cir. 1997) (*en banc*)(quoting *Sandison v. Michigan High Sch. Athletic Ass'n,* 64 F.3d 1026, 1030 (6th Cir. 1995)). These factors are to be balanced against one another and should not be considered prerequisites to the granting of a temporary restraining order or preliminary injunction. *See United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg'l Transit Auth.,* 163 F.3d 341, 347 (6th Cir. 1998). As developed below, the balance of interests weigh strongly in favor of the Plaintiffs and the granting of the present motion.

Firstly, Plaintiffs are highly likely to succeed on the merits because Defendants' conduct violates well-established First Amendment and Fourteenth Amendment rights. The First Amendment to the Constitution provides that "Congress shall make no law ... abridging the freedom of speech, ... or the right

[2] *Buckley v. Valeo*, 424 U.S. 1, at 57 (1976).

of the people ... to petition the Government for a redress of grievances." The City's prohibition on political signs except during a narrow and arbitrary window created by incumbent politicians fails to comply with the First Amendment by inhibiting the dissemination of useful political information to the City's voters. Further, the prohibition fails to comply with recent binding United States Supreme Court and Sixth Circuit Court of Appeals precedent. Accordingly, Plaintiffs are likely to prevail on the merits of their First Amendment claims.

Secondly, Plaintiffs have suffered and will continue to suffer irreparable injury every day in which they are not permitted to engage in core political speech. This injury is magnified by that fact that it comes as Plaintiffs wish to mount an already-challenging effort to replace incompetent and corrupt incumbents on Perrysburg City Council with outsiders with business experience. *Thirdly*, the requested injunctive relief would not result in any injury to Defendants or to third parties. Plaintiffs request only the ability to engage in core protected speech.

Finally, the public interest is clearly in favor of injunctive relief. As the Supreme Court has made clear in decisions dating back decades, preserving freedom of expression is of particular importance for the health of our democracy. Not only do Plaintiffs believe that permitting their specific expressive activity would benefit the public, but enjoining unconstitutional speech-restrictive policies would maximize political discourse on issues of public concern. Furthermore, it is always in the public interest to prevent the violation of one's constitutional rights.

Consequently, the City's prohibition on political signs must be enjoined at once.

A. Plaintiffs are highly likely to succeed on the merits of their free speech claim.

i. The City's prohibition on political yard signs violates the purpose of the First Amendment.

The Supreme Court of the United States observes that "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *Buckley*, supra. And the First Amendment affords the broadest protection to such political

expression in order "to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, at 484 (1957). Accordingly, "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. . . . of course includ(ing) discussions of candidates . . . ." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). "In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation." *Buckley*, supra. Thus, "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) More functionally here, "[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. Federal Elections Commission*, 130 S.Ct. 2893 (2009).

Here, Mr. Pfleghaar is attempting to communicate the most basic of all political speech: "I am running for office, and you should vote for me." Such a "discussion of candidates" is precisely what the Supreme Court has identified as a "major purpose" of the First Amendment. By declaring support for a political candidate off limits other than during an arbitrary and truncated 67 day window, the City preserves a distinct advantage for candidates with high name identification and established political networks, while stripping outsiders of arguably the most efficient means of communication. Indeed, the Supreme Court has acknowledged that, with respect to political speech, "Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute." *City of Ladue v. Gilleo*, 512 U.S. 43, at 56 (1994).

Meanwhile, signs unrelated to candidates face no similar limits: signs urging lower taxes in general may be maintained on private property year-round, while signs indicating "Vote Pfleghaar for lower taxes" are forbidden. Such discriminatory suppression of the discussion of candidates through "an unusually

cheap and convenient form of communication" is flagrantly inconsistent with the purpose of the First Amendment.

ii. The City's prohibition on political signs is subject to strict scrutiny and presumptively invalid.

Content-based laws - - those which regulate speech on the basis of its communicative content - - are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R.A.V. v. St. Paul*, 505 U.S. 377, at 395 (1992).

In *Reed v. Town of Gilbert*, an Arizona pastor challenged a local sign regulation that effectively prevented his church from posting temporary signs directing people to church services. *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). The Supreme Court agreed with the pastor, explaining that "[a] law that is content-based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech," *Reed*, at 2229.

Reed explains that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." 135 S. Ct. at 2227 (citation omitted). Thus, whether the regulation involves "defining regulated speech by particular subject matter ... [or] by its function or purpose" is ultimately irrelevant. *Id.* "Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny." *Id.* The Supreme Court then spoke with specificity as to when sign codes are content-based restrictions on speech:

> The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. * * * [A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a

> content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate . . .. That is a paradigmatic example of content-based discrimination. Nor do the Sign Code's distinctions hinge on "whether and when an event is occurring." * * * it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). * * * And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. * * * As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea.

Id. Likewise, when a law burdens core political speech, courts apply strict scrutiny. *Fed. Election Comm'n v. Wisc. Right to Life, Inc. (WRTL II), 551 U.S. 449, at 464 (2007)*; see also *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995) (when law burdens core political speech, a court will "uphold the restriction only if it is narrowly tailored to serve an overriding state interest").

Here, the City classifies a sign as temporary, and therefore subject to the 67 day event-based durational limit, through reference to the content of the sign. Political signs advocating for against a candidate or electoral issue receive such treatment, while ideological and commercial signs receive no such treatment: a yard sign indicating "Vote for Chip to lower your taxes" is prohibited, while a yard sign indicating "Support Lower Taxes" may remain present in one's yard 365 days per year. Even the precise public office the content of the sign references is relevant to which durational limit applies: as Mr. Walters explained to Mr. Pfleghaar through email correspondence, citizens are currently permitted to display signs regarding the *mayoral* election, but not regarding *city council* elections.

Moreover, the determination as to whether any particular political signs is truly "temporary" and "premature" prior to an election and "expired" thereafter is in and of itself a content-based determination. And that determination is highly subjective: for instance, even many months subsequent to this nation's presidential elections, signs supporting the two major candidates remain visible across America, whether to communicate support or objection to the President and his policies).

Even if there were doubt created by the City's transitive "temporary" label, that doubt is authoritatively resolved by the City's longstanding enforcement policies, patterns, and practices. On July 17, 2017, zoning inspector Brodin Walters indicated to Mr. Pfleghaar that it was "provid[ing] [him] with the following information to ensure that all **political signs** are placed legally." Doc. 1, PageID 19. This correspondence indicates that, in a residential area, "signs are permitted to be displayed 60 days prior to and 7 days **after an election/ voting day.**" *Id.* When Mr. Pfleghaar sought to further clarify, the City indicated "In order to be in compliance with the current code your signs should come down until 60 days prior to the election." Doc. 1, PageID 20-21. Further, the window of opportunity for political signs appears to differ for each local election, as the City indicated "this timeline will be different for Mayoral candidates since they have a primary which allows their signs to go up ahead of council candidates." *Id.* Thus, the City initiates a granular analysis not just of whether a sign contains content advocating for a candidate, but further, which elected office the sign is addressing, prior to imposing $100 per day fines. Indeed, the City has dispelled any notion that the physical nature or construction of the signs is a factor, explaining that "[t]he real intent of the code . . . is to allow display of election signs during a time that is relevant and then to have them removed upon the conclusion of the election." Doc. 1, PageID 20.

Consequently, the City's restrictions on political signs are content-based, subject to strict scrutiny, and presumptively unconstitutional.

iii. The City's prohibition on political signs fails scrutiny.

Content-based prohibitions that impose severe burdens on political speech through yard signs, such as here, must be narrowly drawn to accomplish a compelling governmental interest. *United States v. Grace*, 461 U.S. 171, 177 (1983). And the City's prohibitions cannot meet this rigorous standard.

Here again, the Supreme Court's analysis in *Reed* is instructive:

> The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806, 2817.

> Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra,* at 425, 113 S.Ct. 1505. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs.
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> In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a " 'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,'" *Republican Party of Minn. v. White,* 536 U.S. 765, 780 (2002), the Sign Code fails strict scrutiny.

Reed, supra., at pp. 2231 – 2232.

Following suit, the Sixth Circuit Court of Appeals has applied *Reed* to political signage in a manner leaving no doubt as to the unconstitutionality of the City's restrictions on political signs. In *Wagner v. City of Garfield Heights,* the City of Garfield Heights contended that its limits on political signs could survive strict scrutiny. 675 F. App'x 599, 600–07 (6th Cir. 2017). However, the Court held otherwise, explaining as follows:

> Garfield Heights contends that Section 1140.362, just as the contested regulation in *Reed*, advances compelling government interests of aesthetic appeal and traffic safety. We will follow the Court's example in *Reed* and assume without deciding that these interests are sufficiently compelling. Even so, Section 1140.362 succumbs to strict scrutiny for the same reason as the contested regulation in *Reed*: it is "hopelessly underinclusive." * * * Garfield Heights "similarly has not shown that limiting temporary [political] signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not." *Reed*, 135 S. Ct. at 2232. Because Section 1140.362 is not narrowly tailored to further the city's interest in promoting aesthetic appeal and traffic safety, it thus fails strict scrutiny.

Id. *Reed* and *Wagner* are consistent with a long line precedent invalidating durational limits on political yard signs. In *Knoeffler v. Mamakating,* a federal court explained as follows: "Although size and shape regulations have been repeatedly upheld by the courts, Mamakating's ordinance goes much farther by . . . imposing durational limits on larger signs. At least one court has found that window signs are "a completely ineffective alternative channel of communication to lawn signs. Further, durational limits on signs have been repeatedly declared unconstitutional. Therefore, Chapter 44 cannot withstand strict

scrutiny because it is not narrowly tailored. Chapter 44 is a content-based regulation of speech that violates the First Amendment." 87 F. Supp. 2d 322, at 333 (S.D.N.Y. 2000); see also *Dimas v. Warren,* 939 F. Supp. 554 (E.D.Mich. 1996)("it has not been shown that this particular time period of [forty-five] days, even if evenhandedly applied to all temporary signs, reasonably and adequately provides for the exercise of First Amendment rights…. the ordinance fails to leave open valid alternative channels for communication for the homeowner.."); *Whitton v. Gladstone,* 54 F.3d 1400 (8th Cir. 1995)("Although Gladstone's justification for enacting the durational limitations was to curtail the traffic dangers which political signs pose and to promote aesthetic beauty, Gladstone has not seen fit to apply such restrictions to *identical signs* displaying nonpolitical messages which present *identical concerns* . . we conclude that despite Gladstone's laudable asserted purposes for enacting the durational limitations (traffic safety and aesthetic beauty), whether or not a sign falls within the limitations imposed by § 25–45 is based solely upon the message conveyed by the sign, i.e., is it a "political" sign…"); *City of Antioch v. Candidates' Outdoor Graphic Service,* 557 F.Supp. 52, 60 (N.D.Cal.1982).

These decision are built upon the Supreme Court's strong protection for yard signs on private property as an essential mechanism for free speech. The Supreme Court has emphasized that "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the 'speaker.' " *City of Ladue v. Gilleo,* 114 S.Ct. 2038, at 2046 (1994); *See also, Cleveland Area Board of Realtors v. City of Euclid,* 88 F.3d 382 (6th Cir.1996). Furthermore, "a person who puts up a sign at her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means." *Id.*

Here, the City of Perrysburg claims that the following governmental interest warrants its durational prohibition on political yard signs: "to enhance the physical appearance of the City of Perrysburg, to preserve scenic beauty and architectural history, and to create an appearance that is attractive to business

[and] improve traffic safety by avoiding the distractions of disorganized or confusing presentation of signs." However, as in the foregoing cases, even if these interests were compelling, the City's prohibitions are not narrowly tailored to effectuate those interests because they are arbitrary and underinclusive.

First, a 298 day prohibition on political signage is not a narrowly tailored means of effectuating those interests because other signs may be maintained on private property 365 days per year. These include signs with ideological messages, commercial signs, and signs with political overtones that simply fall short of supporting or opposing a candidate. These signs all trigger the same aesthetic and traffic concerns that the City cites. So do the political signs addressing the *mayoral* election, which *are* legally capable of display at the time of this filing.

Second, the prohibition is arbitrary. It ignores that fact that citizens may wish to use election-related political signs for multiple purposes at multiple times. In a nation of polarized political views, the current display of a political sign for or against Donald Trump, Hillary Clinton, or Gary Johnson is shorthand for identifying oneself and his or her support for particular policies or actions of the federal government in general, ranging from fiscal policy to foreign affairs.

Third, the prohibition is severely burdensome to political speech because it has not changed even as Ohio has embraced "early voting." For the November 7, 2017 general election, Military and Overseas Absentee Voting begins September 23, 2017 and Early In-Person Voting and Absentee Voting begin on October 11, 2017. See Ohio Secretary of State "Voting Schedule."[3] This means candidates such as Mr. Pfleghaar may only utilize an important method of political speech for 16 days before some residents begin to vote in Perrysburg's City Council election. Such durational limits are particularly burdensome to outsiders with lower name identification and less-established donor and political networks - - in essence of such prohibitions were logical limit, i.e. to impose similar durational limits on going door-to-door, leaving door hangers, or displaying political bumper stickers, debate could be entirely stifled. Meanwhile, as the Supreme Court has acknowledged, well-placed yard signs are likely the ultimate example of unconnected,

[3] A color-coded schedule is available online at *https://www.sos.state.oh.us/elections/voters/voting-schedule/#gref.*

outsider-driven grass-roots politics, as the average homeowner lacks access to media outlets or the capacity to make large donations to candidates.

In sum, the City can effectuate its interests through narrower means than acting as a "ministry of truth" that determines which topics are relevant to its citizens, such as reasonably limiting the size of signs and prohibiting disheveled and dilapidated signs. All the while, it must not be forgotten, as the Supreme Court has acknowledged, that "the residents have the same strong incentive to keep their property values up and to prevent visual clutter in their yards and neighborhoods as does the city. The private interest of the owners . . . should very substantially diminish the city's concerns. . ." *City of Ladue*, supra., at 2047.

Ultimately, because the City's restrictions are (1) stridently "underinclusive" and (2) severely burdensome of politic speech in an arbitrary manner, these restrictions are not narrowly tailored. Accordingly, they must be enjoined at once.

B. Plaintiffs are confronted with irreparable injury.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, (1976) (plurality); *accord id.* at 374–75, 96 S.Ct. at 2690 (Stewart, J., concurring); *see also Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir.1989) ("The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief."). Thus, satisfaction of the first prong of the preliminary injunction standard – demonstrating a strong likelihood of success on the merits – also satisfies the irreparable injury standard. *Id.* (holding that if a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated); *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (finding that "when a party seeks a preliminary injunction on the basis of the potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor").

Plaintiffs have demonstrated a substantial likelihood of success on the merits. As such, Plaintiffs will suffer irreparable injury if Defendants are not immediately enjoined from pursuit of their unconstitutional suppression of Plaintiffs' speech. Further, and perhaps most importantly to Plaintiffs, with an election just months away, Plaintiffs are unable to fully and effectively engage with their fellow citizens, through their message of choice, at this most critical time.

C. **No public interest is served by continued threats, intimidation, and harassment against Plaintiffs, nor would be private harm accrue.**

Neither Defendants nor others will suffer any harm if they are enjoined from enforcing this unconstitutional policy against Plaintiffs. There is no reason to believe that City operations would be threatened. And the unconstitutional character of this threat leaves no legitimate interest in its continued application. On the other hand, the public interest is served by protecting free expression, maximizing political activity, striking down policies that chill speech, and by vindicating Plaintiffs' constitutional rights. *See G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) ("it is always in the public interest to prevent the violation of a party's constitutional rights"). Meanwhile, a city government's interest in "aesthetics" are far from sufficiently compelling to override citizens' need for information in advance of an important local election, much less their well-established constitutional rights.

III. CONCLUSION

For the foregoing reasons, this Court must at once enjoin the City of Perrysburg, Ohio and its agents from (1) enforcing Section 1233.50 of its municipal code so as to prohibit the posting of political signs on private property beyond the City's arbitrary 67 day window; (2) threatening fines or other penalties in response to citizens' posting of political signs beyond the aforesaid window.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion and memorandum in support, as well as the verified complaint filed in this action has been served upon the following, via e-mail, on the date of filing:

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Respectfully submitted,

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