UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

DOUG OPPENHEIMER,	:	**Case No. 1:19-CV-770**
	:	
Plaintiff,	:	**Judge Barrett**
	:	**Magistrate Judge Bowman**
v.	:	
	:	
CITY OF MADEIRA, OHIO,	:	**PLAINTIFF'S MOTION FOR**
	:	**TEMPORARY RESTRAINING ORDER**
Defendant.	:	**AND PRELIMINARY INJUNCTION**
	:	

Plaintiff DOUG OPPENEHIMER moves, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, for the entry of a temporary restraining order and preliminary injunction enjoining enforcement of Chapter 159 of the Codified Ordinances of the City of Madeira as it regulates the size and number of yard signs based upon the content of such signs in violation of the First Amendment to the United States Constitution.

MEMORANDUM IN SUPPORT

DOUG OPPENEHIMER initiated this action by the filing of a *Verified Complaint* challenging the constitutionality of the restrictions imposed by the CITY OF MADEIRA on yard signs, including, restrictions that preclude the display of political signs greater than 6 square feet at his residence and the number of such signs.

The Supreme Court has recognized the special role and function that the posting yard signs at one's residence served in the context of the First Amendment. In *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the Court described residential yard signs as "a venerable means of communication that is both unique and important," as well as noting that "residential signs have long been an important and distinct medium of expression." *Id*. at 54-55; *see id.* at 56 (characterizing residential yard signs as "important medium of speech"). Thus, the Court recognized that:

- "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else." *Id.* at 56.
- "[r]esidential 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." *Id.* at 57.
- "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.* at 57.

Thus, it is beyond cavil that the use of residential yard signs as a means of communication is not only protected by the First Amendment, but that the use of such signs is of special and unique importance in the exercise of one's free speech rights. It is in this context and with an appreciation of the importance that yard signs serve in adding to the marketplace of ideas that Mr. OPPENHEIMER brings the challenge to the *Sign Regulations* of the CITY OF MADEIRA.

I. FACTS

A. Mr. OPPENHEIMER's effort to exercise First Amendment rights comes in conflict with the *Sign Regulations* of the CITY OF MADEIRA.

DOUG OPPENHEIMER, a resident and taxpayer of the CITY OF MADEIRA, has been involved in the politics and governmental oversight for several years. *Verified Complaint* ¶¶*41-43.* Presently, Mr. OPPENHEIMER desires to enter and participate freely within the marketplace of ideas in order to promote and advocate in support of reform candidates running for the Madeira City Council, as well as to promote his criticism of the Madeira City Council, but without having to comply with the City's discriminatory and unconstitutional restrictions on speech relative to the posting of signs at his residence. *Verified Complaint* ¶¶*44-48.*

In order to express and publicize his criticism of the Madeira City Council, Mr. OPPENHEIMER recently posted in the yard at his residence in the CITY OF MADEIRA a sign calling upon the removal of the "Clowns on City Council". *Verified Complaint* ¶¶*45 & 48.*

Additionally, in light of the forthcoming general election to be held on November 5, 2019, Mr. OPPENHEIMER also posted in his yard a second sign calling for the election of reformers to the Madeira City Council. *Verified Complaint ¶¶46 & 48.* Each of these two signs which Mr. OPPENHEIMER posted in his were sixteen square feet in area. *Verified Complaint ¶47.*

Upon posting the two foregoing signs in his yard at his residence within the CITY OF MADEIRA, Mr. OPPENHEIMER was contacted by the Madeira Police Chief on September 9, 2019, apprizing him that the two signs in his yard were violating the *Sign Regulations* and needed to be taken down immediately. *Verified Complaint ¶53.* In response to the indication from the Madeira Police Chief that the two signs in his yard were violating the *Sign Regulations* and needed to be taken down, Mr. OPPENHEIMER inquired of the specific provisions of the *Sign Regulations* which were supposedly being violated; in response, the Madeira Police Chief indicated something would be delivered later that day. *Verified Complaint ¶54.*

Later that same day, *i.e.*, September 9, 2019, a police officer with the Madeira Police Department delivered to Mr. OPPENHEIMER at his residence a copy of Section 159.26 and Section 159.99 of the Codified Ordinances of the City of Madeira and, in so doing, also indicated that the two signs needed to be taken down by the morning otherwise Mr. OPPENHEIMER would be cited for violating the *Sign Regulations*. *Verified Complaint 56.*

In response to the immediate and threatened enforcement of the *Sign Regulations* against him, Mr. OPPENHEIMER promptly removed the two signs posted at his residence less he be subjected to the time, inconvenience and potential penalties associated with violating the *Sign Regulations. Verified Complaint ¶58.* Notwithstanding the foregoing, Mr. OPPENHEIMER desires to post the two yard signs (now removed upon then threat of being cited for violation of the *Sign Regulations*). *Verified Complaint ¶59.* Mr. OPPENHEIMER also desires to post

additional signs in yard concerning political matters, including supporting or opposing specific candidates for Madeira City Council in the forthcoming election, and to post more than one such sign in support or opposition to such candidates. *Verified Complaint* ¶*60.* Mr. OPPENHEIMER has not done so in light of the prohibitions in the *Sign Regulations* and the threatened enforcement of the *Sign Regulations* against him, including enforcement of the limitation on the number of political signs. *Verified Complaint* ¶*60.*

B. The *Sign Regulations* of the CITY OF MADEIRA.

The CITY OF MADEIRA comprehensively regulates the posting of signs within its geographic jurisdiction in accordance with Chapter 159 of the Codified Ordinances of the City of Madeira (the "*Sign Regulations*"). *Verified Complaint* ¶¶*15-16*. The effort of DOUG OPPENHEIMER to post the two signs in his yard ran afoul of two distinct provisions of the *Sign Regulations*: (i) Section 159.20 of the Codified Ordinances of the City of Madeira which restricts, in residential districts, the size of temporary yard signs (which include political signs) to six square feet, though allows an exception for signs which announce charitable, institutional or civic events to be up to 50 square feet; and (ii) Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira which restricts the number of temporary yard signs to but a single sign, though allows an exception for, *inter alia*, additional temporary yard signs in support or opposition to candidates or issues appearing on the ballot provided the Hamilton County Board of Elections has certified the candidate or issue to appear on the ballot.

In summary, as explicitly provided for in the *Sign Regulations*, the size of yards signs permitted on private property in a residential district within the CITY OF MADERIA and the number of such signs are dependent upon the content of the message on the sign.

II. FACTS

A. Standard for Issuance of a Temporary Restraining Order/Preliminary Injunction

When considering whether a temporary restraining order or preliminary injunction should be granted, the Court is called upon to consider four factors: (1) whether the movant has a substantial likelihood of success of the merits; (2) whether the movant would otherwise suffer irreparable injury; (3) whether the issuance of the 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 School Athletic Ass'n*, 119 F.3d 453, 459 (6th Cir. 1997)(*en banc*)(quoting *Sandison v. Michigan High School Athletic Ass'n*, 64 F.3d 1026, 1030 (6th Cir. 1995)). These factors must be balanced against one another; they are not prerequisites to the grant of a temporary restraining order or preliminary injunction. *See United Food Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Trans. Auth.*, 163 F.3d 341, 347 (6th Cir. 1998).

B. Plaintiff is entitled to a Temporary Restraining Order and Preliminary Injunction enjoining enforcement of the *Sign Regulations*.

1. Plaintiff has a substantial likelihood of success on the merits.

The posting of signs displaying messages is a traditional method of speaking and, indeed, "communication by signs and posters is virtually pure speech." *Arlington Cty. Republican Comm. v. Arlington Cty, Va.*, 983 F.2d 587, 593 (4th Cir. 1993)(quoting *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir. 1976). A law regulating a property owner's right to erect a yard sign affects the owner's (and a candidate's) First Amendment rights. *See Curry v. Prince George's Cty*., 33 F. Supp.2d 447, 449 n.3 (D. Md. 1999)(citing *Craig v. Boren*, 429 U.S. 190, 194-97 (1976)). Moreover, the First Amendment has "its fullest and most urgent application" to speech uttered

during political campaigns. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976)).

In determining whether the *Sign Regulations* violate the First Amendment, the "normal inquiry…is, first, to determine whether a regulation is content based or content neutral, and then, based on the answer to that question, to apply the proper level of scrutiny." *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994)(O'Connor, J., concurring)(citations omitted).

In evaluating a sign regulation restricting speech, "a law regulating speech is facially content-based if it 'draws distinctions based on the message,'; if it 'distinguish[es] among different speakers, allowing speech by some but not others,'; or if, in its application, 'it require[s] enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred.'" *Thomas v. Bright*, __ F.3d __, __ (6th Cir. Sept. 11, 2019)(internal citations omitted but quoting *Reed v. Town of Gilbert*, 576 U.S. __, 135 S.Ct. 2218, 2227 (2015), *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 340 (2010), and *McCullen v. Coakley*, 573 U.S. 464, 479 (2014) (quoting *FCC v. League of Women Voters*, 468 U.S. 364, 383 (1984))); *see also Reed*, 576 U.S. at __, 135 S.Ct. at 2227 ("[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"); *see also Planet Aid v. City of St. Johns*, 782 F.3d 318, 326 (6th Cir. 2015)("[i]f a law 'treats speech differently based on the viewpoint or subject matter of the speech, on the words the speech contains, or on the facts it conveys, the [law] is based on the content (and the communicative impact) of speech.'" (quoting Eugene Volokh, *The First Amendment and Related Statutes* 360 (5th ed. 2014)

a. The size restriction on political yard signs under Section 159.20 is a content-based regulation of speech.

""[A] regulatory scheme [that] requires a municipality to examine the content of a sign to

determine which ordinance to apply . . . appears to run afoul of *Reed's* central teaching." *Wagner v. City of Garfield Heights*, 675 Fed. App'x 599, 604 (6th Cir. 2017). And this is true with respect to the size restriction imposed by Section 159.20 of the Codified Ordinances of the City of Madeira.

Generally speaking, Section 159.20 imposes a size limit of six square feet on temporary signs in residential districts:

> No temporary sign shall be larger than six square feet in area *except as provided in division (G)(4) below*.

Emphasis added. But as this language makes clear, this size limitation excludes or excepts certain signs. The signs that are not subject to the size limitation of six square feet, but which can be as large of 50 square feet, are those signs "which announce charitable, institutional or civic events such as church bazaars, charitable fund raising events and similar announcements". *Section 159.20(G)(4), Codified Ordinances of the City of Madeira*. Thus, the size limitation of temporary signs in residential districts in the CITY OF MADEIRA pursuant to Section 159.20 is dependent upon the content of the sign itself. *See Thomas*, __ F.3d at __ ("Billboard Act is a blanket, content-neutral prohibition on any and all signage speech except for speech that satisfies an exception; here, the on-premises exception. In this way, Tennessee favors certain content (i.e., the excepted content) over others, so the Act, 'on its face,' discriminates against that other content. The fact that this content-based aspect is in the exception to the general restriction, rather than the restriction itself, does not save it from this analysis"); *Central Radio Co. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016)(sign code was content-based regulation of speech when sign code "exempted governmental or religious flags and emblems, but applied to private and secular flags and emblems").

b. The restriction on the number of signs under Sections 159.20 and 159.26 is a content-based regulation of speech.

Similar to the restriction on the size of signs, the restriction within the *Sign Regulations* on the number of permissible signs on a lot also involves a content-based regulation of speech. While Section 159.20(C) of the Codified Ordinances of the City of Madeira provides that, with respect to the placement of temporary signs on private property in a residential district within the CITY OF MADEIRA, "[n]o more than one temporary sign per lot may be displayed at any one time". And this one-sign-per-lot is reiterated in Section 159.26(D)(1):

> Every parcel in all zoning districts shall be permitted to display one two-sided or one one-sided sign containing any free speech message.

But then, both sections grant certain exceptions to the one-sign-per-lot restriction provided the additional sign concerns specific candidates or issues appearing on a ballot:

> One single or double sided political sign per individual candidate and individual issue shall be permitted, except as to corner lots or through lots on which there may be placed one such sign facing or adjacent to each street abutting said lot.

Section 159.20(C), Codified Ordinances of the City of Madeira. And a similar exception is contained in Section 159.26(D)(2):

> At any time that the County Board of Elections has identified a candidate or issue that will be placed on the ballot at the next general or special election, one additional sign may be erected for each candidate or issue that the occupant wishes to support or oppose. Such political signs shall still be subject to the dimensional regulations set forth in division (D)(1) of this section.

Thus, additional signs are permitted on residential lots and in other areas of the CITY OF MADERIA but only if the signs relate specifically to an "individual candidate" or an "individual issue". Because, pursuant to Sections 159.20(C) and 159.26(D)(2), the permissible number of signs allowed on any lot varies based upon whether signs indicate support or opposition to candidates or ballot issues, those provision regulate speech based upon content. *See Fehribach v.*

City of Troy, 412 F.Supp.2d 639, 645 (E.D. Mich. 2006)("provision limiting the number of political signs and the provision limiting the time election signs could be displayed, were clearly content-based because they only applied to signs containing content which was political").

c. As content-based restrictions on speech, the *Sign* Regulations are subject to, but do not satisfy, the requirements of strict scrutiny.

Content-based regulations on speech are subject to strict scrutiny to determine whether a limitation is justified by a compelling or overriding interest. *McIntyre*, 514 U.S. at 347; *Boos v. Barry*, 485 U.S. 312, 321-22 (1988). And in addition to demonstrating a compelling governmental interest, the government must also prove that the regulation is narrowly drawn to achieve that interest. *United States v. Playboy Entertainment Group, Inc.*, 29 U.S. 803, 813 (2000): *Ward v. Rock Against Racism*, 492 U.S. 781, 798 (1989). Stated otherwise, the regulation may not limit more speech than necessary to vindicate the compelling interest asserted by the government. *Turner Broadcasting Sys., Inc. v. Federal Communications Comm'n*, 520 U.S. 180, 189 (1997).

"Board prophylactic rules in the area of free expression are suspect…. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438 (1963)(citations omitted). "With rare exceptions, content discrimination in regulations of the speech of private citizens on private property…is presumptively impermissible, and this presumption is a very strong one." *Ladue*, 512 U.S. at 59 (O'Connor, J., concurring). Where an ordinance regulates non-commercial speech, as the *Sign Regulations* do here, such ordinance is invalid if it "regulates noncommercial [signs] based on their content, " or if it "imposes greater restrictions on noncommercial than on commercial [signs]." *Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246, 248 (9th Cir. 1988). The *Sign Regulations*, including Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira, do both and, therefore, are presumptively unconstitutional. As such, the *Sign Regulations*

regulate and restrict speech based upon its content and the CITY OF MADEIRA cannot meet the requirements to satisfy strict scrutiny. Accordingly, DOUG OPPENHEIMER has a substantial likelihood of success on the merits

d. Even if the *Sign Regulations* are not content based, they still do not satisfy constitutional muster.

Even if a regulation of speech could be considered a content-neutral time, place and manner restriction, it may still be constitutionally infirm. For "[j]ust as the First Amendment 'does not guarantee the right to communicate one's views at all times and places or in any manner' …so it does not permit municipalities to regulate methods of expression however, whenever and wherever they wish." *Prime Media, Inc. v. City of Brentwood*, 398 F.3d 814, 818 (6th Cir. 2005)(quoting *Wheeler v. Comm'r of Highways, Commonwealth of Ky*., 822 F.2d 586, 589 (6th Cir. 1987)).

"The Supreme Court has recognized that content-neutral regulations can have a dampening effect on the substance of the protected speech." *Brentwood Academy v Tennessee Secondary School Athletic Assoc*., 262 F.3d 543, 554 (6th Cir. 2001). "A governmental entity may impose reasonable, content-neutral restrictions on the time, place, or manner of protected speech, provided that such restrictions (1) prescribe adequate standards for administrating officials to apply; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternatives for communication." *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 571 (6th Cir. 2012). A content-neutral regulation must still "focus[] on the source of the evils the [government] seeks to eliminate" and "eliminate them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." *Ward*, 491 U.S. 800 n.7.

Thus, if the *Sign Regulations* are subject to intermediate scrutiny (as opposed to strict scrutiny), the analysis must still be undertaken with special appreciation that, in light of *Ladue*,

even "content neutral limitations on yard signs are subject to a stringent First Amendment analysis for fear that broad limitations on yard signs would stifle an important channel of public speech." *Peachlum v. City of York, Pennsylvania*, 333 F.3d 429, 434 n.8 (3rd Cir. 2003); *accord Fehribach*, 412 F.Supp.2d at 645 ("because the First Amendment affords special protection to speech in the home, the Supreme Court has accorded special 'reverence' to yard signs").

If the Court should apply intermediate scrutiny at this stage, it need look no further than a challenge to a comparable sign regulation in the City of Hudson, located in Summit County. In *Hudson v. Arshinkoff*, 2005-Ohio-6976 (9th Dist.), an Ohio court reviewed the constitutionality of a zoning ordinance which limited all signs in residential districts to 8 square feet – and thus, proceeded under the less exacting intermediate scrutiny examination.

In *Hudson*, the Court concluded that the size restriction did advance the substantial governmental interest of "promoting the public health, safety and welfare by insuring that signs do not adversely affect the city's aesthetics and do not distract or confuse motorists or pedestrians." *Id.* ¶15. However, the Court ultimately concluded that the size limitation of 8 square feet was not narrowly tailored to further such interests:

> We question [the City's] argument that the ordinance is necessary for aesthetic purposes. We believe homeowners 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 of Hudson. "The private interests of owners in the market value of their property should very substantially diminish the city's concerns regarding the unlimited proliferation of signs." *Dimas v. City of Warren* (E.D. Mich. 1996), 939 F.Supp. 554, citing *City of Ladue v. Gilleo* (1994), 512 U.S. 43, 58.
>
> We further find persuasive that [the City] could not show any specific aesthetic or traffic problems that existed prior to the enactment of [the limitation on the size of signs to 8 square feet]. Thus, the enactment of the challenged ordinance was not in response to any particular concerns. We also conclude [the City] could promote its interests through less restrictive means. One less restrictive means already utilized by Appellee City of Hudson is to permit signs to be posted "…no closer than 10 feet from the pavement of the travel lane of the public or private street."…. Such a regulation addresses the safety concerns of vehicular and pedestrian traffic. [The

> City] could also regulate the design and condition of the temporary yard signs as well as the duration of the time period the temporary yard signs could be posted.
>
> Finally, we conclude the square footage limitation does not provide sufficient alternatives for political speech. Although residents of the City of Hudson could pursue viable alternatives to express their political views such as: public speeches, door-to-door and public canvassing, distributing handbills, appearing at citizen group meetings, advertising, and posting signs in local businesses and automobiles, we conclude these alternatives are insufficient because they require too much time involvement or too much expense. The Fourth Circuit Court of Appeals reached the same conclusion in *Arlington Republican Commt. v. Arlington Cty., Virginia,* [983 F.2d 587,] at 594-595 [(4th Cir. 1993)].
>
> Also, [the City] fails to recognize that the square footage limitation infringes on the right of the candidates as well as the homeowners. "Displaying 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*, supra, at 56. 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." (Emphasis sic.) *Id.* at 57. Accordingly, we conclude the challenged ordinance unconstitutionally infringes upon the First Amendment of the United States Constitution.

Hudson, 2005-Ohio-6976 ¶¶17-21; *contra Davis v. City of Green*, 106 Ohio App.3d 223 (1995). As note above, the CITY OF MADEIRA even more restrictively limits the size of yard signs. And this logic and analysis applies similarly to the restriction imposed by the CITY OF MADEIRA of one-sign-per-yard

Additionally, other courts which have address the restriction upon the size of signs recognize the significant burden governments must have to justify such direct restrictions upon the exercise of free speech rights. For example, in *State v. Miller*, 83 N.J. 402, 416 A.2d 821 (1980), the New Jersey Supreme Court struck down, based on constitutional grounds, a size limitation of 6 square feet for signs. The Court recognized the pitfalls for arbitrary size limitations:

> Limitations on the size of a sign may be imposed if the allowable square footage is not determined in an arbitrary manner. The size limits, if any, must be large enough to permit viewing from the road, both by persons in vehicles and on foot. Inadequate sign dimensions may strongly impair the free flow of protected speech.

> In the context of the Milltown Borough ordinance here, the limitation to six square feet . . . is probably inadequate.

Id. at 416, 416 A.2d at 828. Similarly, in *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir. 1976), while upholding a restriction of a single yard sign of 16 square feet (with a cumulative limitation of 80 square feet of signs), the Ninth Circuit reiterated a serious distrust in feigned claims of traffic safety or aesthetics from justifying such restrictions:

> Considering the universe of distractions that face motorists on our streets, temporary political posters are not sufficiently significant to justify so serious (size limitation) a restriction upon political expression.

540 F.2d at 1370.

In this case, due to the severe limitation that the CITY OF MADEIRA places on the size and number of permissible signs which Mr. OPPENHEIMER and others may use to disseminate their voice criticizing the Madeira City Council or advocating relative to the forthcoming election, even under the less exacting standard of intermediate scrutiny, DOUG OPPENHEIMER still has a substantial likelihood of success on the merits

2. Irreparable injury will result if the *Sign Regulations* are not immediately enjoined.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1973). Thus, satisfaction of the first prong of the preliminary injunction standard – demonstrating a substantial likelihood of success – also satisfies the irreparable injury standard. *Id.*; *see also Connection Distributing Co. v. Reno*, 14 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 "). Mr. OPPENHEIMER has demonstrated a substantial likelihood of success on the merits. Thus, he has and will continue to suffer irreparable

injury if the *Sign Regulations* are not immediately enjoined with respect to both the permissible size of political signs and the number of permissible political signs.

3. The balance of harm tips decidedly in Mr. OPPENHEIMER's favor.

The CITY OF MADEIRA will not suffer any harm if it is enjoined from enforcing against enforcement of the unconstitutional provisions of the *Sign Regulations*. The unconstitutional character of the *Sign Regulations* leaves the CITY OF MADEIRA with no legitimate interest in the continued application or enforcement of those provisions. And, as discussed above, there is no effort to tie the *Sign Regulations* to any claimed governmental interests. In contradistinction to the CITY OF MADEIRA, Mr. OPPENHEIMER (and surely others) desire to participate in political discourse and will suffer irreparable harm if the *Sign Regulations* are not immediately enjoined.

4. The request relief will benefit the public interest.

Finally, it is in the public interest to enjoin the *Sign Regulations* in order to maximize the political speech of Mr. OPPENHEIMER and all property owners in the City. *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"). To be sure, the public interest favors the protection of constitutional rights. *Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982)("it is in the public interest not to perpetuate the unconstitutional application of a statute"). Mr. OPPENHEIMER will certainly not be alone in benefitting from an order of this Court that restores the full and robust marketplace of ideas but allow the full panoply of constitutionally-protected political speech in the CITY OF MADEIRA.

III. CONCLUSION

All four factors to consider militate in favor of the issuance of a temporary restraining order and preliminary injunction. As developed above, Mr. OPPENHEIMER requests that the Court immediately issue a temporary restraining order enjoining the CITY OF MADEIRA, as well as those acting at its direction or at its behest, from enforcing the challenged unconstitutional provisions of the *Sign Regulations* and then proceed to consideration of the issuance of a preliminary injunction. And if these provisions are found not to be severable, Mr. OPPENHEIMER requests that the Court enjoin enforcement of the entire *Sign Regulations*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Motion*, together with a copy of the *Verified Complaint* (Doc. No. 1), will be served upon the following via e-mail on the 18th day of September 2019:

Brian Fox
Madeira City Solicitor
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/s/ *Curt C. Hartman*