

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DOUG OPPENHEIMER,	:	
	:	Case No. 1:19-cv-00770
Plaintiff,	:	Judge Douglas R. Cole
	:	Magistrate Judge Stephanie K. Bowman
v.	:	
	:	
CITY OF MADEIRA, et al.,	:	
	:	
Defendants.	:	

DECLARATION OF JEAN GEOPPINGER McCOY

I, Jean Geoppinger McCoy, hereby declare, under penalty of perjury of the laws of the United States of America, that the following is true and correct.

1. My name is Jean Geoppinger McCoy and I make this declaration based upon my own personal knowledge and my review of publicly available federal court documents.

2. I was licensed to practice law in Ohio on November 5, 1990, and have maintained my law license in good standing since then.

3. I am also licensed to practice law by the Commonwealth of Kentucky and have been admitted to appear before the United States Supreme Court, the United States Courts of Appeals for the Second, Fourth, Sixth, Tenth and Eleventh Circuits, and the United States District Courts for the Southern District of Ohio, the Northern District of Ohio and the District of Colorado.

4. I am a partner with the law firm of Dinsmore & Shohl LLP ("Dinsmore"). I previously practiced with the law firm of Graydon, Head & Ritchey, LLC ("GH&R") from 1990

to 1998; with the law firm of Waite, Schneider, Bayless & Chesley Co., L.P.A. from 1998 to April 2012; as a sole practitioner from May 2012 to January 2013; and the law firm of White, Getgey & Meyer Co., L.P.A. from January 2013 to December 2018. Effective January 1, 2019, David P. Kamp, Sarah E. Abbott and I moved our practice to Dinsmore. I joined Dinsmore as a Partner of Counsel; effective January 1, 2020, I was named a Partner of the firm.

5. As detailed in my resume, which is attached as Exhibit A, I am a graduate of Miami University, in Oxford, Ohio, and the University of Cincinnati College of Law. During law school, I was a judicial extern to the Honorable S. Arthur Spiegel and a member of the University of Cincinnati Law Review. Among my other professional affiliations, I am a past-President of the Cincinnati Bar Association (2013-2014) and was the long-time Executive Director of the Potter Stewart American Inn of Court (2003-2018).

6. I have been retained by Michael A. Roberts of GH&R, trial counsel to the City of Madeira ("Madeira"), and Brian W. Fox of Bricker & Eckler, LLP, the Law Director/Solicitor for Madeira, to review the work product that plaintiff's counsel, Christopher P. Finney ("Finney") and Curt C. Hartman ("Hartman") and their respective firms, generated in *Oppenheimer v. City of Madeira*, Case No. 1:19-cv-00770 ("*Oppenheimer*"), and to opine on whether the fees and expenses charged by The Law Firm of Curt. C. Hartman (the "Hartman Firm") and Finney Law Firm, LLC (the "Finney Firm") are "fair and reasonable."

7. This affidavit is based on my education, training and more than 31 years of experience as a complex, civil litigation trial lawyer in state and federal courts in Ohio and throughout the United States.

8. My fee for performing this review is my customary hourly rate of \$440.00 per hour.

I have no contingent financial interest in the outcome of this litigation.

9. In order to determine fair and reasonable attorneys' fees for this litigation, I initially reviewed the following:

- a. the *Oppenheimer* docket sheet;
- b. the *Oppenheimer* pleadings, with an emphasis on the Verified Complaint, Motion for Temporary Restraining Order & Preliminary Injunction, Amended Complaint, Motions to Dismiss, Motion for Summary Judgment and related briefing;
- c. the Reports & Recommendations and Orders of the Court; and
- d. Plaintiff's Motion for an Award of Attorney Fees and Cost[s] and the supporting declarations of Hartman (the "Hartman Declaration") and Finney (the "Finney Declaration") and Alexander J. Durst, Esq. ("Durst").

10. When reviewing the Finney and Hartman Declarations, I noted that Finney and Hartman both listed *Wagner v. City of Garfield Heights*, Case No. 1:11-cv-02173 (N.D. Ohio) ("*Wagner*"), as a precedent-setting First Amendment case on which they both had worked. Hartman described *Wagner* as "an ultimately successful First Amendment (sic) to sign regulation by municipality located outside of Cleveland."

11. Appreciating the significance of counsel's prior experience with the distinct legal questions at issue in *Oppenheimer*, I reviewed the following:

- a. the *Wagner* docket sheet;
- b. the *Wagner* pleadings, with an emphasis on the Verified Complaint, Motion for Temporary Restraining Order &

Preliminary Injunction, Motion for Summary Judgment and related briefing; and

- c. the *Wagner* Motion of Plaintiff for an Award of Attorneys' Fees and Costs and supporting declarations of Finney and Hartman and Benjamin J. Ockner ("Ockner").

12. When reviewing Ockner's declaration in support of fees and expenses in *Wagner*, I noted that Ockner distinguished *Wagner* from *Comm. to Elect Kathy Magda v. City of Ashtabula*, No. 1:12-cv-01994 (N.D. Ohio) ("*Ashtabula*"), a "challenge . . . to the city's political sign regulations," in which "plaintiffs . . . were represented by the same counsel as Mr. Wagner here . . ." *Wagner*, Decl. of Benjamin J. Ockner (Doc. 63) at 5, n.1. Neither Finney nor Hartman mentioned *Ashtabula*, which was "a simple First Amendment challenge to a City of Ashtabula Ordinance concerning the posting of campaign signs," in their declarations in support of fees in this case. *Id.*

13. Given the similarities of *Ashtabula*, *Wagner* and *Oppenheimer*, I also reviewed:

- a. the *Ashtabula* docket sheet;
- b. the *Ashtabula* pleadings, with an emphasis on the Motion of Plaintiffs for an Award of Attorneys' Fees and Costs and supporting declarations of Finney and Hartman and Ockner; and
- c. the Honorable Donald C. Nugent's Judgment awarding attorneys' fees and costs.

14. After reviewing and comparing the *Oppenheimer*, *Wagner* and *Ashtabula* pleadings, I compared the narrative billing statements submitted in *Oppenheimer*, *Wagner* and *Ashtabula* to ascertain and evaluate the time spent on similar tasks in each case.

15. I also reviewed the Ohio State Bar Association's *The Economics of Law Practice in Ohio in 2019 Desktop Reference*, the *Laffey Matrix*¹ and relevant case law pertaining to the grant of attorneys' fees in fee-shifting litigation.

16. In determining whether the hourly rates and hours billed were fair and reasonable, I was guided by Rule 1.5(a) of the Ohio Rules of Professional Responsibility, which provides that the following factors to be considered in determining the reasonableness of a fee include:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

¹ *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354, 371 (D.D.C. 1983) (holding that hourly rates for attorneys practicing civil law in the Washington, D.C. metropolitan area should be categorized by years in practice and adjusted for inflation).

17. There is no indication, in the record, that Finney/the Finney Firm's and/or Hartman/the Hartman Firm's representation of the plaintiff is contingent. Thus, my legal analysis is based on the billing invoices.

18. My analysis in this case involved three elements: (1) were the hourly rates charged by the lawyers fair, reasonable and consistent with similarly situated lawyers and law firms; (2) was the division of labor between partners and associates and paralegals reasonable and appropriate; and (3) was the total time expended on the litigation fair and reasonable.

19. After reviewing the Finney and Hartman Firms' billing statements for *Oppenheimer*, it is my opinion that:

a. as the owner of a small firm with almost 34 years of experience, 21 years of which have been as a public interest attorney, Finney's hourly rate of \$575.00/hour for public interest matters is inconsistent with hourly rates charged by similarly situated attorneys and firms and, therefore, unreasonable;

b. I agree with plaintiff's expert Durst's conclusion that Finney's appropriate hourly rate is \$517.08 (Doc. 58 at ¶ 7(b), PageID 486);

c. with less experience than Finney, Hartman's base hourly rate of \$610.00/hour for federal court litigation is neither reasonable nor consistent with hourly rates charged by similarly situated attorneys and firms;

d. comparing Hartman's 28 years of experience to Finney's 34 years, Hartman's hourly rate is more appropriately \$450.00/hour, particularly in light of Durst's conclusion that "[p]laintiff's counsel's appropriate hourly rate is \$517.08" (*id.*);

e. the \$305/hour rate charged by the Finney Firm for the work performed by Brian C. Shrive is fair, reasonable and compatible with comparable law firms; and

f. the \$170/hour rate charged by the Finney Firm for the work performed by paralegals is fair, reasonable and compatible with comparable law firms.

20. Utilizing the above rates, plaintiff's counsel's lodestar totals:

Timekeeper	Hours	Rate	Lodestar
Christopher P. Finney	11.6	\$517.08	\$5,998.13
Brian C. Shrive	6.9	\$305.00	\$2,104.50
Finney Paralegals	2.8	\$170.00	\$476.00
Curt C. Hartman	143.9	\$450.00	\$64,755.00
TOTALS	165.2		\$73,333.63

21. I next examined the allocation of work between Hartman, Finney and the Finney Firm's associate and paralegals. The division of labor at the Finney Firm was, in my opinion, fair and reasonable and consistent with a conscientious lawyer's attention to a client's objective in maximizing lawyer effort on a cost effective basis. Finney handled the high-level strategy; his associate and the paralegals assisted consistent with their education, training and experience.

22. Because Hartman is a sole practitioner, there was no division of labor at the Hartman Firm. As a result, all work performed, including tasks that warranted a lesser billing rate, have been charged at the rate of \$610.00/hour, which is unreasonable, particularly in light of the hours expended.

23. Last, I reviewed the billing summaries as a whole and the total fees and expenses of each firm, comparing those fees and expenses to the work product and ultimate outcome of the litigation – summary judgment in favor of, and \$1,000 in compensatory damages awarded to, plaintiff.

24. I have concluded that the overall expenses charged by the Finney and Hartman Firms ($\$47.23 + \$439.65 = \$486.88$) are fair and reasonable. However, the overall fees charged by the Finney and Hartman Firms ($\$9,250.50 + \$87,779.00 = \$97,029.50$) are not proportional to the work performed or the result achieved.

25. Given their previous representation of plaintiffs in *Wagner* and *Ashtabula*, and the outcomes in those cases, Finney and Hartman took little (if any) risk in undertaking the representation of plaintiff in this litigation.

26. The questions involved were neither novel nor difficult given Finney's and Hartman's experience in virtually identical litigation for which fees were previously awarded. While this case was significantly less complex than *Wagner*, plaintiff's counsel billed for work product that was copied from existing templates developed in *Wagner* and/or *Ashtabula* and previously paid for by attorneys' fee awards in those cases. Compare, e.g., *Wagner* Verified Compl. for Decl. J., TRO, Prelim. & Permanent Inj. (Ex. B) and *Oppenheimer* Verified Compl. (Ex. C). In many respects, this case is more akin to *Ashtabula*, in which the Ashtabula City Council amended the sign ordinance at issue four days after plaintiffs filed suit and sought a temporary restraining order, then plaintiffs withdrew their motion for injunctive relief. In *Ashtabula*, the court denied plaintiffs attorneys' fees resulting from the preparation and filing of plaintiffs' motion for temporary restraining order and preliminary injunction (there was no hearing).

27. In this case, plaintiff's counsel expended at least 21.8 hours of time, valued at \$9,465.46, on restraining order issues:

Timekeeper	TRO/PI Hours	Rate	Lodestar
Christopher P. Finney	0.7	\$517.08	\$361.96
Brian C. Shrive	2.7	\$305.00	\$823.50
Curt C. Hartman	18.4	\$450.00	\$8,280.00
TOTALS	21.8		\$9,465.46

28. In light of the foregoing, I believe that an appropriate attorneys' fee award in this case is in the range of \$21,000.00 to \$37,000.00.

Executed this 25th day of March, 2022.


Jean Geoppinger McCoy

EXHIBIT A

JEAN GEOPPINGER McCOY
DINSMORE & SHOHL, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202
jean.mccoy@dinsmore.com
(513) 832-5481

PROFESSIONAL EXPERIENCE

DINSMORE & SHOHL, LLP, Cincinnati, Ohio

Partner, January 2019 to Present

Honors/Awards

- Martindale-Hubbell AV Preeminent Rating, 2019
- Ohio Super Lawyers, 2019

WHITE, GETGEY & MEYER CO., L.P.A., Cincinnati, Ohio

January 2013 to 2018

Honors/Awards

- Martindale-Hubbell AV Preeminent Rating, 2005-2018
- Ohio Super Lawyers, 2013-2018
- Colorado Trial Lawyers Association, Access to Justice Award, 2018
- Judge Julia A. Stautberg Award, Cincinnati Bar Association, Women Lawyers Committee, 2016
- Top 50 Women Attorneys in Ohio, 2015
- Top 25 Women Attorneys in Cincinnati, 2015
- *University of Cincinnati Law Review*, Distinguished Service Award, 2015
- *Venue Magazine*, Woman of Influence, 2014

MATLOCK ELECTRIC CO., INC., Cincinnati, Ohio

General Counsel, 1990-2020

Key Achievements

- **Corporate Legal Counsel** – Handled all corporate legal matters, including labor and employment, contracts, compliance and risk management, and litigation, for family-owned corporation that specializes in the sale and service of industrial electrical equipment.

JEAN GEOPPINGER McCOY, LLC, Cincinnati, Ohio

June 2012 to January 2013

WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A., Cincinnati, Ohio

June 1998 to April 2012

Key Achievements

- **Complex Litigation** – Represented large institutional investors, individuals and classes of individuals in complex, multi-district and class action cases, from inception through MDL consolidation, discovery and settlement or trial. Handled all aspects of discovery, including planning, coordinating, implementing and managing voluminous electronic document production and review projects. Briefed and argued all manner of pre-trial motions and tried various cases to jury verdict. Achieved numerous settlements through negotiation and/or alternative dispute resolution, secured their approval, and implemented such settlements on local, national and international levels.
- **Appellate Practice** – Assisted with briefing and oral argument of numerous appeals at the state and federal levels, including the United States Supreme Court.
- **Negotiations** – Negotiated the settlement and resolution of numerous complex, class action cases, including approximately \$9 billion in compensation and restitution for Holocaust victims and survivors in the context of U.S., European and Central/Eastern European government-to-government and international business negotiations.

Honors/Awards

- Public Justice Foundation Trial Lawyer of the Year, 2009
- Martindale-Hubbell AV Preeminent Rating
- Ursuline Academy Woman of the Year, 2001

GRAYDON, HEAD & RITCHEY, Cincinnati, Ohio

Law Clerk, 1989; Associate, 1990 to 1998

Key Achievements

- **Commercial Litigation** – Represented individuals and corporate clients in commercial disputes in state and federal courts at the trial and appellate levels, and before administrative bodies. Handled all aspects of discovery, briefed and argued pre-trial motions, and tried various cases to verdict. Practiced extensively in the employment, bankruptcy, insurance defense and domestic relations arenas; performed First Amendment and criminal defense work.
- **In-House Counsel** – Served as in-house counsel for General Electric Aircraft Engines (now GE Aviation), for a period of 18 months, conducting internal compliance investigations.

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, Cincinnati, Ohio

Extern, 1989

THE FIFTH THIRD BANK, Cincinnati, Ohio

Law Clerk, 1988-1989

EDUCATION

UNIVERSITY OF CINCINNATI COLLEGE OF LAW, Cincinnati, Ohio

Juris Doctor, May 1990

Honors/Activities

- Book Award, Advocacy
- University of Cincinnati Law Review, Member & Business Manager

MIAMI UNIVERSITY, Oxford, Ohio

Bachelor of Arts, May 1987

Honors/Activities

- *Cum Laude*
- University Honors, Senior Directed Study: *Bar Polling and Its Effects*
- Phi Beta Kappa

MIAMI UNIVERSITY (DOLOBOIS) EUROPEAN CENTER, Grand Duchy of Luxembourg

Spring 1986

ADMISSIONS

Member of the bars of the State of Ohio, the Commonwealth of Kentucky, the U.S. Supreme Court, the U.S. Courts of Appeals for the Second, Fourth, Sixth, Tenth and Eleventh Circuits, and the U.S. District Courts for the Southern District of Ohio, the Northern District of Ohio and the District of Colorado.

PROFESSIONAL ASSOCIATIONS

Federal and Ohio State Bar Associations, Member

Cincinnati Bar Association – Immediate Past President (2014-2015); President (2013-2014), President-Elect (2012-2013), Vice President (2011-2012), Secretary (2009-2010), Board of Trustees (2005-2009, 2010-2011), Nominating Committee, Grievance Committee (1999-2012, June 2018-Present), Cincinnati Academy of Leadership for Lawyers (Inaugural Class), Bar Admissions Committee (~2005 to Present), Mid-Term Judicial Evaluation Committee, Judicial Candidate Advertising Task Force, Alternative Dispute Resolution Committee, Communications Advisory Committee, Unauthorized Practice of Law Committee, Young Lawyers Section, Partners in the Legal Community and Continuing Legal Education Presenter

Potter Stewart American Inn of Court – Executive Director/Counselor and Board Member (2003-2018), Master of the Bench (2003-2021), Barrister (1993-1998) and Barrister Advisor to the Board (1996-1998)

Volunteer Lawyers Project (1990-1998, 2007-Present)

COMMUNITY INVOLVEMENT

Board Memberships – UC Health/University Hospital Champions (2012-2013); University of Cincinnati College of Law Board of Visitors (2006-2019), Food Allergy Awareness, Support & Training, Inc. (1998-2015), Gloucester Square Condominium Association, Memorial Community Center, Ursuline Academy Alumnae Board

Fundraising – Academy of Art of Cincinnati, Beech Acres, Crayons to Computers, Memorial Community Center, Ursuline Academy, United Way; Autism Society of Greater Cincinnati

Autism Society of Greater Cincinnati – 2016 Fundraiser, Committee Member

Immaculate Heart of Mary Parish (Burlington, Kentucky) – Parish Member (2011 to Present); VIRTUS-Trained School Volunteer (2011-2017)

Miami University – Community Outreach and Recruiting Programs

Our Lord Christ the King Parish – Parish Council (Member and President) Strategic Planning Committee; Strategic Planning Continuation Committee; Christ Renews His Parish; Parish Member (1965-2011)

St. Henry District High School – Parent Volunteer (2015 to 2021)

Fernside Center for Grieving Children – Facilitator (2019 to Present)

Walk Now for Autism – Mikey's Marchers

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FRANK WAGNER aka
FRANCIS WAGNER

Plaintiff,

v.

CITY OF GARFIELD HEIGHTS, OHIO,

and

WILLIAM WERVEY,

Defendants.

: Case No. _____

:

: Judge _____

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**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT
INJUNCTIONS, AND DAMAGES**

Now come Plaintiff FRANCIS WAGNER (also known as FRANK WAGNER) and for his Complaint against the CITY OF GARFIELD HEIGHTS, OHIO, and WILLIAM WEVEY, allege as follows:

INTRODUCTION

1. This is an action for declaratory judgment, injunctive relief, and damages arising from the unconstitutional regulation of the display of signs displaying a political message within the City of Garfield Heights, Ohio.

2. The City’s draconian sign regulations stifle and impose an undue burden upon Plaintiff’s protected speech by, *inter alia*, restricting and unconstitutionally limiting the size and number of signs that a resident or taxpayer of the City may display on his or her property.

3. Despite the recent affirmation by the United States Supreme Court that “First Amendment freedoms need breathing space to survive,” *Citizens United v. Federal Elections Commission*, __ U.S. __ (2010), 175 S. Ct. 753, 775, the effect and impact of the City’s sign

regulations is to restrict the free speech rights of Plaintiff, and others similarly situated, in violation of the First Amendment and Fourteenth Amendments to the United States Constitution, and Article I, Section 11 of the Ohio Constitution.

4. Recently, the City and its officials notified Plaintiff that his display of a singular sign on at his residence violated the zoning regulations of the City and, in particular, a zoning prohibition of “political signs in excess of six square feet.”

5. Due to the alleged violation of the zoning regulation concerning the maximum size of political signs, Plaintiff faces the real and imminent prosecute of prosecution if the sign was not removed.

6. Due, in part, to the real and imminent prosecute of prosecution for the posting of but a single sign, Plaintiff removed the sign less he face such prosecution, notwithstanding the fact that Plaintiff desires to continue to exercise his First Amendment rights through the posting of the subject sign.

7. Thus, Plaintiff has been forced or compelled to censor his speech by removing the single sign at his residence in order to comply with the City’s sign regulations. Plaintiff has also censored his speech for fear of further enforcement action by the City and its officials arising from the mere act of participating in public debate—something that is long part of our culture and law, and at the heart of our republic.

8. Accordingly, Plaintiff challenges the City’s sign regulations, both facially and as-applied to Plaintiff’s political speech, because the regulations violate (i) the First Amendment to the United States Constitution (made applicable to the Defendants by the Fourteenth Amendment to the United States Constitution); (ii) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and (iii) Article I, Section 11 of the Ohio Constitution.

9. Action by this Court, including preliminarily and permanently enjoining the offending sign regulations of the City, will ensure that speech on public issues in the City of Garfield Heights continues to occupy the highest rung of First Amendment protection.

JURISDICTION & VENUE

10. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under Acts of Congress, specifically, 42 U.S.C. § 1983 and 42 U.S.C. § 2000cc, which provide causes of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28 U.S.C. § 2202, to secure preliminary and permanent injunctive relief and damages; and under 42 U.S.C. § 1988 to grant Plaintiff's prayer for relief regarding costs, including reasonable attorneys fees.

11. Venue is proper within this judicial district and division under 28 U.S.C. §1391(b) and Local Rule 82.1, in that (i) Defendants are situated within this judicial district and division, (ii) Plaintiff resides within this judicial district and division, and (iii) all of the claims asserted in this matter arose within this judicial district and division.

PARTIES

12. Plaintiff FRANCIS WAGNER (also known as FRANK WAGNER) is a resident and taxpayer of the City of Garfield Heights. Mr. Wagner posted a sign critical of a public official of the City at his residence which is located in the City of Garfield Heights.

13. Pursuant to Section 715.01 of the Ohio Revised Code, Defendant CITY OF GARFIELD HEIGHTS, OHIO (“Village”) is a body politic and corporate organized under the laws of the State of Ohio, and is capable of being sued.

14. The City acts by and through various commissions and public officials including, without limitation, the village council, the mayor, the village administrator and the village zoning inspector.

15. Defendant WILLIAM WERVEY is the Building Commissioner for the City of Garfield Heights. Pursuant to Section 1123.01 of the Codified Ordinances of the City of Garfield Heights, the Building Commissioner of the City of Garfield Heights is responsible for the enforcement of the City’s zoning code, including the sign regulations challenged herein.

STATEMENT OF FACTS
The City’s Sign Regulations

16. The City regulates the posting of signs within its geographic jurisdiction in accordance with Chapter 1140 of the Codified Ordinances of Garfield Heights (the “Sign Regulations”).

17. The Sign Regulations comprehensively regulate all signs within the City.

18. Section 1140.362 of the Codified Ordinances of Garfield Heights regulates the placement of political signs within the City and specifically provides: “Political signs, may be placed in a window or on the lawn in any zoning district and shall not exceed six (6) square feet per sign, and shall not exceed four (4) feet in height. Such signs shall not be placed in the City’s right-of-way, shall be maintained in good condition, and shall be removed after the political issue or campaign is completed or no longer contested.”

19. Thus, the maximum size of any political sign that any resident of the City of Garfield Heights may post at his or her residence is limited to one size of six (6) square feet.

Plaintiff's Criticism of Council Member of Garfield Heights

20. In the City of Garfield Heights, two political issues which of been of significant interest in the community concerns the use of cameras to enforce traffic laws and the imposition of a trash tax.

21. One member of the council of the City of Garfield Heights who has been a strong proponent of these efforts is Tracy Mahoney.

22. In order to speak out as to his opposition to Councilmember Mahoney, Plaintiff posted in the yard of his residence a simple sign which declared to the public passing by: "You do the math: Traffic Camera's + Rubbish Trash = Mahoney Baloney."

23. Councilmember Mahoney is also a candidate for re-election to city council at the forthcoming election to be held in November 2011.

24. True and accurate photographs of the sign as posted by the Plaintiff in his yard are attached hereto as **Exhibit A**.

25. Plaintiff posted this sign in his yard in September 2011, in the approximate location as indicated in the photographs attached hereto as **Exhibit A**.

26. However, soon after posting the sign, Plaintiff received a letter from Defendant William Werve, the Building Commissioner for the City of Garfield Heights, dated September 19, 2011.

27. Attached hereto as **Exhibit B** is a true and accurate copy of the letter (the "Werve Letter") from Defendant Werve.

28. As indicated in the Wervey Letter, Defendant Wervey declared that the single sign which Plaintiff had posted in his yard violated the restriction regarding the maximum permissible size of political signs mandated by Section 1140.362 of the Codified Ordinances of Garfield Heights, *i.e.*, the sign exceeded six square feet in violation of that permitted by the Sign Regulations.

29. The sign which Plaintiff had posted in his yard in September 2011 measured four feet by four feet, thus having an area of sixteen square feet.

30. As further indicated in the Wervey Letter, Defendant Wervey threatened Plaintiff Frank Wagner with prosecution in the Garfield Heights Municipal Court if the sign was not removed by September 23, 2011.

31. Pursuant to Section 1140.99 of the Codified Ordinances of Garfield Heights, “[w]hoever violates any provision of [the Sign Regulations] shall be fined not more than one thousand dollars (\$1,000.00). Each day such violation is committed, or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.”

32. Thus, unless he removed the sign and stopped engaging in political speech critical of a public official, Plaintiff faced the real and imminent prospect having court proceedings initiated against him and being subject to the imposition of significant fines.

33. In light of the threat of Defendant Wervey contained within the Wervey Letter, Plaintiff removed the sign he had posted in his yard in order to not be subject to such a prosecution and the prospect of significant fines being imposed against him.

34. All acts herein of the City, its officers, agents, servants, employees or persons acting at its behest or direction, were done and are continuing to be done under the color or pretense of state law, including the enactment, implementation and/or enforcement of the Sign Regulations and all other ordinances, regulations, custom, policies and usages of the City.

**FIRST CAUSE OF ACTION
(Declaratory Judgment / Injunctive Relief, 28 U.S.C. § 2201 *et seq.*)**

35. Plaintiff incorporates by reference all of the foregoing paragraphs as if fully restated herein.

36. Through the imposition of a limitation of 6 square feet on signs with a political message, Section 1140.362 of the Codified Ordinances of Garfield Heights imposes a significant and unconstitutional burden on those wishing to post signs with electoral or political messages through

37. For example, the message which Plaintiff desires to disseminate through the posting of a sign in his yard is effectively lost if such speech was constrained and limited to be posted on a sign with an area of only 6 square feet.

38. Section 1140.362 of the Codified Ordinances of Garfield Heights is unconstitutionally overbroad and has a substantial chilling effect on the free speech rights of Plaintiff, as well as others not before the Court.

39. Section 1140.362 of the Codified Ordinances of Garfield Heights is a regulation of speech based upon content, but the provision is not narrowly tailored to serve any compelling governmental interest.

40. Alternatively, Section 1140.362 of the Codified Ordinances of Garfield Heights imposes a severe burden on the constitutional rights of the Plaintiff, as well as others, but the provision is not narrowly tailored to serve any compelling governmental interest.

41. Alternatively, Section 1140.362 of the Codified Ordinances of Garfield Heights imposes a substantial burden on the constitutional rights of the Plaintiff, as well as others, but the provision does not serve any substantial governmental interest of the City of Garfield Heights and, even if it does, the provision is not narrowly tailored to further any such interest.

42. In order to prevent further violations of Plaintiff's (and others') constitutional rights by the City and Defendant Wervey, it is both appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring any provisions of the Sign Regulations that limits the size of signs posting a political message to 6 square feet unconstitutional its their face or as applied to Plaintiff or, to the extent that such provisions are not severable, declaring the entire Sign Regulations unconstitutional on their face.

43. Furthermore, pursuant to 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure, it is appropriate and hereby requested that this Court issue a preliminary and permanent injunction enjoining the City and Defendant Wervey from enforcing the unconstitutional provisions of its Sign Regulations against Plaintiff and others, and that the Court award, at a minimum, nominal damages to the Plaintiff as a result of the Defendants' violation of his constitutional rights.

SECOND CAUSE OF ACTION
(Violation of the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and Article I, Section 11 of the Ohio Constitution)

44. Plaintiff incorporates by reference all of the foregoing paragraphs as if fully restated herein.

45. The Sign Regulations constitute and embody the official policy, practice and custom of the City of Garfield Heights.

46. As indicated and declared above, the Sign Regulations are unconstitutional as being in violation of the First Amendment to the United States Constitution.

47. As a direct and proximate result of the City's unconstitutional restriction on the display of political signs in violation of Plaintiff's right to the freedom of speech, Plaintiff is

suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law.

48. Furthermore, as a direct and proximate result of the Defendants' past and ongoing violation of the Plaintiff's rights guaranteed and protected by the United States Constitution (including freedom of speech), Plaintiff has suffered and is entitled to recover damages, including, at a minimum, nominal damages.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. That this Court render a declaratory judgment declaring that the aforementioned provisions of the City's Sign Regulations, and to the extent such provisions are not severable, the entire Sign Regulations, are invalid both on its face and as-applied to Plaintiff's speech under the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 11 of the Ohio Constitution;
- B. That this Court issue an injunction restraining the enforcement of the Sign Regulations in all respects as they are determined to be unconstitutional;
- C. That this Court retain jurisdiction of this matter for the purpose of enforcing its Order;
- D. That this Court award Plaintiff's costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988;
- E. That this Court award damages in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid, but, at a minimum, nominal damages;
- F. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and

- G. That this Court grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s Christopher P. Finney

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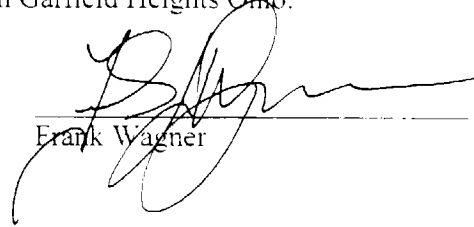
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Attorneys for Plaintiff Frank Wagner

VERIFICATION

In accordance with 28 U.S.C. § 1746, I, Frank Wagner, declare under penalty of perjury that I have read the foregoing Verified Complaint, and the facts alleged are true and correct.

Executed this 10th day of October 2011, in Garfield Heights Ohio.



Frank Wagner

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

DOUG OPPENHEIMER
aka PHILIP DOUGLAS OPPENHEIMER,

Plaintiff,

v.

CITY OF MADEIRA, OHIO,

Defendants.

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Case No. 1:19-CV-770

Judge _____

VERIFIED COMPLAINT

DOUG OPPENHEIMER aka PHILIP DOUGLAS OPPENHEIMER for his Complaint hereby alleges as follows:

PARTIES

1. This is an action for declaratory judgment, injunctive relief, and damages arising from the unconstitutional regulation of the display of signs displaying a political message within the CITY OF MADEIRA.

2. The City’s draconian sign regulations stifle and impose an undue burden upon the core political speech of DOUG OPPENHEIMER by, *inter alia*, restricting and unconstitutionally limiting the size and number of signs that a resident or taxpayer of the CITY OF MADEIRA may display on his or her property.

3. Despite the recent affirmation by the United States Supreme Court that “First Amendment freedoms need breathing space to survive,” *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the effect and impact of the sign regulations of the CITY OF MADEIRA is to restrict the free speech rights of DOUG OPPENHEIMER, and others similarly situated, in violation of the First Amendment and Fourteenth Amendments to the United States

Constitution, and Article I, Section 11 of the Ohio Constitution.

4. Recently, officials with the CITY OF MADEIRA notified DOUG OPPENHEIMER that his display of two yard signs at his residence violated the zoning regulations of the CITY OF MADEIRA and, in particular, a zoning restriction on the size of permissible political signs and the number of permissible political signs, and that, unless such signs were immediately removed, DOUG OPPENHEIMER would be cited and prosecuted for violating the zoning regulations.

5. In light of the direct and unequivocal threat that, unless the two yard signs at his residence supposedly in violation of the zoning regulations were removed, then DOUG OPPENHEIMER would be cited and prosecuted for the alleged violation of the zoning regulations concerning the maximum size of political signs and the permissible number of political signs, DOUG OPPENHEIMER faces the real and imminent threat of prosecution if the signs were not removed.

6. In order to avoid the costs and inconvenience of defending against an alleged violation of the zoning regulations concerning the placement of political signs, as well as in light of the direct and unequivocal threat to DOUG OPPENHEIMER to remove the two yards signs less he face being cited and prosecuted, DOUG OPPENHEIMER forewent the full and robust exercise of his First Amendment rights by removing the two yard signs less he face such prosecution, notwithstanding the fact that DOUG OPPENHEIMER desires to continue to exercise his First Amendment rights through the posting of the subject signs and additional other signs.

7. Thus, DOUG OPPENHEIMER has been forced or compelled to censor his speech by removing the two signs at his residence in order to comply with the sign regulations of the CITY OF MADEIRA and not posting additional other signs.

8. Accordingly, DOUG OPPENHEIMER challenges the sign regulations of the CITY OF

MADEIRA, both facially and as applied to him, because the regulations violate the First Amendment to the United States Constitution (made applicable to the CITY OF MADEIRA by the Fourteenth Amendment to the United States Constitution).

9. Action by this Court, including preliminarily and permanently enjoining the offending sign regulations of the CITY OF MADEIRA will ensure that speech on public issues in the CITY OF MADEIRA continues to occupy the highest rung of First Amendment protection.

JURISDICTION & VENUE

10. Court has jurisdiction pursuant to 28 U.S.C. § 1331.

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b), as the Defendant resides within this District, the Defendant transacts business within this District and the conduct complained of occurred within this District.

PARTIES

12. Plaintiff DOUG OPPENHEIMER, who is also known as PHILIP DOUGLAS OPPENHEIMER, is a citizen of the State of Ohio and is a resident within this District.

13. Defendant CITY OF MADEIRA is a municipal corporation under the laws of the State of Ohio and, pursuant to Ohio Rev. Code § 715.01, may sue and be sued. The CITY OF MADEIRA is located within this District.

14. All actions taken the CITY OF MADEIRA were undertaken under color and authority of state law, and were undertaken as a result of a policy statement, ordinance, regulation or decision officially adopted or promulgated by the CITY OF MADEIRA.

STATEMENT OF FACTS ***The City's Sign Regulations***

15. The CITY OF MADEIRA 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*”).

16. The *Sign Regulations* comprehensively regulate all signs within the CITY OF MADEIRA.

17. A true and accurate copy of the *Sign Regulations*, as published on the website of the CITY OF MADEIRA, is attached hereto as Exhibit A.

18. Section 159.03 of the Codified Ordinances of the City of Madeira defines a “sign” as:

Any writing, word, number, pictorial, illustration, decoration, emblem, symbol, trademark, flag, banner, pennant insignia, flashing light, beacon or other device which is placed in a manner that the communication, announcement, message, attraction, advertisement or promotion inherent to the device is visible or appears to be intended to be visible to persons on adjoining property or nearby public rights-of-way.

19. Section 159.03 of the Codified Ordinances of the City of Madeira defines a “temporary sign” as:

(1) A sign which has either or both of the following characteristics:

(a) The primary purpose of the sign will be completed by the occurrence of an event which is likely to take place within a period of a few days to a few months such as an election or sale of real estate; and/or

(b) The material of which the sign is made or the manner in which the sign is affixed to the ground or a structure are of such nature as not to be suitable for permanent display because exposure to the elements will unreasonably deface the message, discolor or tear the material or loosen the methods by which such a sign is anchored.

(2) Examples of TEMPORARY SIGNS include but are not limited to political signs, “For Sale” signs, garage sale signs, sale signs and some project signs.

20. Section 159.03 of the Codified Ordinances of the City of Madeira specifically defines a “political sign” as:

A sign indicating support or disapproval of a public issue or political candidate.

21. Section 159.19 of the Codified Ordinances of the City of Madeira further clarifies and regulates the posting of “temporary signs”. Specifically, Section 159.19 of the Codified Ordinances of the City of Madeira provides that temporary signs “may only display one of the following messages”: (i) political messages; (ii) real estate message; (iii) garage sale signs; (iv) commercial messages; (v) charitable messages; (vi) personal messages; and (vii) project messages.

22. Within Section 159.19 of the Codified Ordinances of the City of Madeira, a “political message” in the context of a temporary sign is defined as involving “signs with a message endorsing candidates for public office (local, state or federal), endorsement of political issues (whether on a ballot or not) and such other messages as set forth a statement regarding a public issue”.

23. Section 159.20 of the Codified Ordinances of the City of Madeira specifically regulates the placement of temporary signs on private property in a residential district within the CITY OF MADEIRA.

***Sections 159.20 and 159.26 of the Codified Ordinances of the CITY OF MADEIRA:
Regulation of the Size of Political Signs***

24. Section 159.20 of the Codified Ordinances of the City of Madeira regulates and restricts the size of political signs placed on private property in a residential district within the CITY OF MADEIRA.

25. Section 159.20(A) of the Codified Ordinances of the City of Madeira provides (with emphasis added) that, with respect to the placement of temporary signs on private property in a residential district within the CITY OF MADEIRA:

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

26. Within Section 159.20(G) of the Codified Ordinances of the City of Madeira, certain

exceptions are set forth to the size restriction on temporary signs in a residential district within the CITY OF MADEIRA:

displays a message concerning or related to an event shall be removed no later than five days, or such lesser period if specified below, after the event has occurred and the message, therefore, no longer serves its intended purpose. These event oriented signs shall include but not be limited to the following examples:...

(4) Signs which announce charitable, institutional or civic events such as church bazaars, charitable fund raising events and similar announcements shall not exceed 50 square feet in area nor be more than eight feet high and must be removed within 24 hours of the conclusion of the event.

27. Thus, pursuant to Section 159.20 of the Codified Ordinances of the City of Madeira, with respect to temporary signs on private property in a residential district within the CITY OF MADEIRA, political signs are restricted to being six square feet in area while signs announcing charitable, institutional or civic events may be up to 50 square feet in area.

28. In addition to regulating political signs in a residential district within the CITY OF MADEIRA through Section 159.20 of the Codified Ordinances of the City of Madeira, the CITY OF MADEIRA also imposes regulations and restrictions on political signs through Section 159.26 of the Codified Ordinances of the City of Madeira.

29. Section 159.26(B) of the Codified Ordinances of the City of Madeira introduces and defines the phrase “free speech message” as meaning:

any message that is not intended to convey a commercial message. Free speech messages include but are not limited to religious, political, economic, social and philosophical messages.

30. Thus, whether a sign communicates a *free speech message* is based upon the content of the sign.

31. Section 159.26(B) of the Codified Ordinances of the City of Madeira also introduces and define the phrase “commercial message” as meaning:

any message intended to call attention to a business or promote the sale of any goods or services.

32. Similar to the size restriction contained in Section 159.20(A) of the Codified Ordinances of the City of Madeira, Section 159.26(D) of the Codified Ordinances of the City of Madeira similarly restricts the size of political signs within the CITY OF MADEIRA:

Each side of the sign [containing a *free speech message*] shall not exceed six square feet in area.

33. Thus, the *Sign Regulations* limit the size of all political signs within the CITY OF MADEIRA to six square feet in area but signs announcing a charitable, institutional or civic event may be up to 50 square feet in area within a residential district within the CITY OF MADEIRA.

34. In summary, the size of yards signs permitted on private property in a residential district within the CITY OF MADERIA is dependent upon the content of the message on the sign.

***Sections 159.20 and 159.26 of the Codified Ordinances of the CITY OF MADEIRA:
Regulation of the Number of Political Signs***

35. In addition to regulating the size of political signs placed on private property in a residential district within the CITY OF MADEIRA, Section 159.20 of the Codified Ordinances of the City of Madeira also regulates and restricts the number of political signs placed on private property in a residential district within the CITY OF MADEIRA.

36. 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:

No more than one temporary sign per lot may be displayed at any one time, except for the following:

- (1) One temporary sign for each street on which a lot fronts shall be permitted. Thus corner lots and through lots may have more than one sign displayed; and
- (2) 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.

37. Similar to the restriction on the number of signs contained in Section 159.20(C) of the Codified Ordinances of the City of Madeira, Section 159.26(D)(1) of the Codified Ordinances of the City of Madeira similarly restricts the number of political signs within the CITY OF MADEIRA:

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

38. Section 159.26(D)(2) of the Codified Ordinances of the City of Madeira then expands the number of permissible signs containing *free speech messages*, but specifically ties the permissible additional number of signs to the content of the additional sign:

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.

39. Thus, pursuant to Section 159.26(D)(2) of the Codified Ordinances of the City of Madeira, more than one additional sign containing a *free speech message* is allowed in a residential district within the CITY OF MADEIRA but only if such additional sign expresses support or opposition to a candidate or issued identified by the Hamilton County Board of Elections for placement on the ballot; otherwise, only one sign containing a *free speech message* is permitted in a residential district within the CITY OF MADEIRA.

40. In summary, the number of yards signs permitted on private property in a residential district within the CITY OF MADEIRA is dependent upon the content of the message on the sign.

The CITY OF MADEIRA threatens and violates the robust exercise First Amendment rights

41. DOUG OPPENHEIMER has been a resident in the CITY OF MADEIRA since 1970.

42. DOUG OPPENHEIMER has been involved in the community in the CITY OF MADEIRA.

43. For several years, DOUG OPPENHEIMER has been a governmental watchdog over his local government in the CITY OF MADEIRA.

44. For several years, DOUG OPPENHEIMER has been highly critical of the current administration in the CITY OF MADEIRA.

45. Thus, in order to express and publicize his criticism of the Madeira City Council, DOUG 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”:



46. Additionally, in light of the forthcoming general election to be held on November 5, 2019, wherein elections for seats on the Madeira City Council will be on the ballot, DOUG OPPENHEIMER posted in the yard at his residence in the CITY OF MADEIRA a sign calling for the election of the “Rerformers” to the City Council (adding an extra “r” to “Reformers” so as to

promote additional discussion about the sign):



47. Each of the foregoing signs which DOUG OPPENHEIMER posted in the yard at his residence in the CITY OF MADEIRA were sixteen square feet in area.

48. DOUG OPPENHEIMER posted both signs side-by-side in the yard at his residence within the CITY OF MADEIRA:



49. Because both signs did not “announce charitable, institutional or civic events such as church bazaars, charitable fund raising events and similar announcements”, both signs violated Section 159.20(A) and Section 159.26(D) of the Codified Ordinances of the City of Madeira.

50. Had both signs “announce[d] charitable, institutional or civic events such as church bazaars, charitable fund raising events and similar announcements”, then both signs would have

been permitted pursuant to Section 159.20(G)(4) of the Codified Ordinances of the City of Madeira.

51. Because DOUG OPPENHEIMER posted more than one sign in the yard at his residence in the CITY OF MADEIRA and neither sign supported or opposed a specific candidate identified by the Hamilton County Board of Elections for placement on the ballot at the forthcoming general election, the presence of a second sign violated Section 159.20(D) and Section 159.26(D)(1) of the Codified Ordinances of the City of Madeira.

52. Lacking a full-time zoning staff, the CITY OF MADEIRA regularly utilizes officers with the Madeira Police Department to undertake actions to enforce the Zoning Code, including the *Sign Regulations*. Such actions undertaken by officers with the Madeira Police Department may include notifying residents of violations of the Zoning Code and serving notices to residents.

53. Upon posting the two foregoing signs in his yard at his residence within the CITY OF MADEIRA, DOUG OPPENHEIMER was contacted by the Madeira Police Chief on September 9, 2019, apprising him that the two signs in his yard were violating the *Sign Regulations* and needed to be taken down.

54. 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, DOUG 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 to DOUG OPPENHEIMER later that day.

55. The foregoing conduct and statements of the Madeira Police Chief was part of and in furtherance of the policy, practice and custom of the CITY OF MADEIRA.

56. Later that same day, *i.e.*, September 9, 2019, a police officer with the Madeira Police

Department delivered to DOUG 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, indicated that the two signs needed to be taken down by the morning otherwise DOUG OPPENHEIMER would be cited for violating the *Sign Regulations*.

57. The foregoing conduct and statements of the police officer with the Madeira Police Department was part of and in furtherance of the policy, practice and custom of the CITY OF MADEIRA as established by a policy statement, ordinance, regulation or decision officially adopted or promulgated by the CITY OF MADEIRA.

58. In response to the immediate and threatened enforcement of the *Sign Regulations* against him, DOUG OPPENHEIMER 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*.

59. DOUG OPPENHEIMER desires to post the two signs in the yard at his residence that he had posted but removed upon then threat of being cited for violation of the *Sign Regulations*

60. DOUG OPPENHEIMER also desires to post additional signs in yard concerning political matters, including supporting or opposing specific candidates for Madeira City Council, and to post more than one such sign in support or opposition to such candidates but has not done so in light of the prohibitions in the *Sign Regulations*, the threatened enforcement of the *Sign Regulations* against him, including enforcement of the limitation on the number of *political signs* or signs with *free speech messages*.

FIRST CAUSE OF ACTION
(Declaratory Judgment / Injunctive Relief, 28 U.S.C. § 2201 et seq.)

61. Plaintiff incorporates by reference all of the foregoing paragraphs as if fully restated

herein.

62. Through, *inter alia*, the imposition of a limitation in residential districts of 6 square feet on signs with a political message, Section 159.20 of the Codified Ordinances of the City of Madeira imposes a significant and unconstitutional burden upon DOUG OPPENHEIMER, as well as upon those wishing to post signs with electoral or political messages in a residential district in the CITY OF MADEIRA

63. Through, *inter alia*, the imposition of a limitation in residential districts of 6 square feet on signs with a political message, Section 159.26 of the Codified Ordinances of the City of Madeira imposes a significant and unconstitutional burden upon DOUG OPPENHEIMER, as well as upon those wishing to post signs with electoral or political messages in residential districts in the CITY OF MADEIRA.

64. For example, the message which DOUG OPPENHEIMER desires to disseminate through the posting of the two signs in his yard is effectively lost if such speech was constrained and limited to being posted on a sign with an area of only 6 square feet.

65. Through, *inter alia*, the imposition of a limitation in a residential district of but a single 6 square feet on signs with a political message, Section 159.20 of the Codified Ordinances of the City of Madeira imposes a significant and unconstitutional burden upon DOUG OPPENHEIMER, as well as upon those wishing to post signs with electoral or political messages in residential districts in the CITY OF MADEIRA.

66. Through, *inter alia*, the imposition of a limitation in a residential district of but a single 6 square feet on signs with a political message, Section 159.26 of the Codified Ordinances of the City of Madeira imposes a significant and unconstitutional burden upon DOUG OPPENHEIMER, as well as upon those wishing to post signs with electoral or political messages in residential

districts in the CITY OF MADEIRA.

67. For example, the messages which DOUG OPPENHEIMER desires to disseminate through the posting of the two signs in his yard is effectively lost and precluded based upon the single-sign limitation imposed by the CITY OF MADEIRA.

68. And by jointly and simultaneously imposing both a size limitation and a limitation on the number of signs, Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira further imposes a significant and unconstitutional burden upon DOUG OPPENHEIMER, as well as upon those wishing to post signs with electoral or political messages in residential districts in the CITY OF MADEIRA.

69. Additionally and/or alternatively, by allowing signs “which announce charitable, institutional or civic events such as church bazaars, charitable fund raising events and similar announcements” to be posted in a residential district but allowing such signs to be as large as 50 square feet, Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira constitute restrictions or regulations of speech based upon content.

70. Additionally and/or alternatively, by allowing more than one sign containing a *free speech message* but only if such additional sign indicates support or opposition to a specific candidate or issues that the Hamilton County Board of Elections has identified for placement on the ballot, Section 159.26 of the Codified Ordinances of the City of Madeira constitutes a restriction or regulation of speech based upon content.

71. Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira are unconstitutionally overbroad and have a substantial chilling effect on the free speech rights of DOUG OPPENHEIMER, as well as others not before the Court.

72. Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira are

regulations of speech based upon content, but the provision are not narrowly tailored to serve any compelling governmental interest.

73. Alternatively, Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira impose a severe burden on the constitutional rights of DOUG OPPENHEIMER, as well as others, but the provisions are not narrowly tailored to serve any compelling governmental interest.

74. Alternatively, Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira impose a substantial burden on the constitutional rights of DOUG OPPENHEIMER, as well as others, but the provision does not serve any substantial governmental interest of the CITY OF MADEIRA and, even if they did, the provisions are not narrowly tailored to further any such interest.

75. As a direct and proximate result of the unconstitutional restrictions on the display of political signs imposed by the CITY OF MADEIRA pursuant to Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira, DOUG OPPENHEIMER has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

76. In order to prevent further violations by the CITY OF MADEIRA of the constitutional rights of DOUG OPPENHEIMER and others, it is both appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring any provisions of the *Sign Regulations* that limit or restrict the size of signs posting a political message to six square feet unconstitutional on its face and/or as applied to DOUG OPPENHEIMER or, to the extent that such provisions are not severable, declaring the entire *Sign Regulations* unconstitutional on their face.

77. In order to prevent further violations by the CITY OF MADEIRA of the constitutional

rights of DOUG OPPENHEIMER and others, it is both appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring any provisions of the *Sign Regulations* that limits the number of signs posting a political message unconstitutional on its face or as applied to DOUG OPPENHEIMER or, to the extent that such provisions are not severable, declaring the entire *Sign Regulations* unconstitutional on their face.

78. Furthermore, pursuant to 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure, it is appropriate and hereby requested that this Court issue a preliminary and permanent injunction enjoining the CITY OF MADEIRA from enforcing the unconstitutional provisions of its *Sign Regulations* against DOUG OPPENHEIMER and others, especially in light of the approaching election for Madeira City Council.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 – First and Fourteenth Amendments to the United States Constitution)

79. Plaintiff incorporates by reference all of the foregoing paragraphs as if fully restated herein.

80. The *Sign Regulations* constitute and embody the official policy, practice and custom of the CITY OF MADEIRA.

81. As indicated and declared above, the *Sign Regulations* are unconstitutional as being in violation of the First Amendment to the United States Constitution, made applicable to the CITY OF MADEIRA through the Fourteenth Amendment to the United States Constitution.

82. As a direct and proximate result of the unconstitutional restriction on the display of political signs imposed by the CITY OF MADEIRA pursuant to Sections 159.20 and 159.26 of the Codified Ordinances of the City of Madeira, DOUG OPPENHEIMER has suffered and will

suffered damages and is entitled to recover damages, including, at a minimum, nominal damages.

WHEREFORE, Plaintiff DOUG OPPENHEIMER prays for judgment as follows:

- A. that this Court render a declaratory judgment declaring that the aforementioned provisions of the *Sign Regulations* of the CITY OF MADEIRA, and to the extent such provisions are not severable, the entire *Sign Regulations*, are invalid both on its face and as applied to the speech of DOUG OPPENHEIMER under the First and Fourteenth Amendments to the United States Constitution;
- B. that this Court issue an injunction restraining the enforcement of the *Sign Regulations* in all respects as they are determined to be unconstitutional;
- C. that this Court retain jurisdiction of this matter for the purpose of enforcing its Order;
- D. that this Court award Plaintiff's costs and expenses of this action, including a reasonable attorneys' fees award in accordance with 42 U.S.C. § 1988;
- E. that this Court award damages of at least nominal damages;
- F. that this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and
- G. that this Court grant any other relief to which DOUG OPPENHEIMER is entitled, in law or in equity.

Respectfully submitted,

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VERIFICATION

I, DOUG OPPENHEIMER (also known as PHILIP DOUGLAS OPPENHEIMER), hereby declare, under penalty of perjury, that I have read the foregoing *Verified Complaint* and the facts alleged therein are true and correct.

Executed this 12th day of September 2019, in Hamilton County, Ohio.


Doug Oppenheimer September 12, 2019