

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

DOUG OPPENHEIMER
aka PHILIP DOUGLAS OPPENHEIMER,

Plaintiff,

v.

CITY OF MADEIRA, OHIO,

Defendants.

⋮ **Case No. 1:19-CV-770**
⋮
⋮ **Judge** _____
⋮

⋮ **VERIFIED COMPLAINT**
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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