IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

JULIE PEREIRA, *Plaintiff*, v. CITY OF LAKELAND, TENNESSEE, and KATRINA SHIELDS, *Defendants*.	§ § § § § § § § § §	Case No. 2:24-cv-02380

PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Plaintiff Julie Pereira wants to display a political sign in her front yard that expresses her dissatisfaction with the two major political party candidates who are seeking to be elected President of the United States in 2024. Defendant the City of Lakeland and its Code Enforcement Officer—Defendant Katrina Shields—have not permitted Ms. Pereira to do so unless she obscures and dilutes her message. Because the Defendants' actions are unconstitutional—and because the regulations underlying them are unconstitutionally viewpoint-based and unconstitutionally content-based speech restrictions that cannot withstand strict scrutiny—this Court should enjoin the Defendants from taking further enforcement action against Ms. Pereira for displaying her unredacted political yard sign.

II. FACTS

A. Ms. Pereira's political sign and punishments for displaying it.

Dissatisfied with Joe Biden and Donald Trump—the two major political party

candidates who are seeking to be elected President of the United States in 2024—Plaintiff Julie Pereira posted a sign in her front yard. *See* Compl. (Doc. 1) at ¶ 1. The political message on Ms. Pereira's yard sign speaks simply and cogently for itself:

Id. (citing Ex. 1 to Compl.).

The City of Lakeland and its Code Enforcement Officer, Defendant Katrina Shields, believe that Ms. Pereira's Political Sign violates City of Lakeland sign regulations that prohibit "statements of an obscene, indecent, or immoral character which would offend public morals or decency" and "statements, words or pictures of an obscene nature." *Id.* at ¶ 3. Thus, the Defendants have taken enforcement action against Ms. Pereira related to her sign—including fining her hundreds of dollars. *Id.* at ¶ 40.

Under protest, to avoid further penalties, Ms. Pereira redacted her sign and obscured display of the word "FUCK" on it, thereby (in the Defendants' view) bringing her sign into compliance with the City of Lakeland's Municipal Code. *Id.* at ¶ 41. Currently, Ms. Pereira's redacted sign looks like this:

Id. at ¶ 9 (citing Ex. 4 to Compl., Doc. 1-4).

If Ms. Pereira removes the redaction, she will be charged with another violation and fined again. *Id.* at ¶ 42. If Ms. Pereira removes the redaction again, she has also explicitly been threatened with contempt. *Id.* at ¶ 43. The dispositive concern that the Defendants have expressed about Ms. Pereira's unredacted sign is that it displays a "cuss" word." *See* Ex. 2 to Compl. (Doc. 1-2) at 2 ("Remove the sign displaying the cuss word or cover the word to where it cannot be viewed from the road and neighboring properties."); Ex. 5 to Compl. (Doc. 1-5) at 2 ("The Code Enforcement Officer observed the following: 'A residential yard sign displaying a cuss word. Sign was altered and came into compliance on 1/24/2024. It was altered again on 1/30/2024 to show the entire cuss word.").

B. The City of Lakeland's sign code and its content-based regulations.

Under the City of Lakeland's Municipal Code, signs are regulated differently depending on their message. Ex. 3 to Compl. (Doc. 1-3) at 18–33. Thus, different rules apply to signs depending on whether they are, for example, "works of art with no commercial message," "special event signs for community events," "incidental signs," "window signs," "building marker" signs, "changeable copy signs," "construction signs," "directory signs," "identification signs," "menu board" signs, "model home" signs, "principal ground" signs, "real estate" (but not single-family residential) signs, "residential real estate" signs, "subdivision entry" signs, "temporary signs," "wall signs" (depending on whether they are nonresidential or residential), "temporary residential yard" signs, "suspended signs," or—as here—"political signs." *See id.*

"Political signs"—which the City of Lakeland defines as signs "attracting attention to political candidates or issues[,]" *see id.* at 12—are subject to especially restrictive treatment. Thus, *unlike any non-political sign*, political signs must comply with the following uniquely restrictive conditions: "[s]uch signs shall be limited to not more than one (1) per candidate or issue" except at polling places; "[s]uch signs shall not be placed closer than fifteen feet (15') from the edge of pavement or five feet (5') behind a sidewalk, whichever is greater;" "[n]o such sign shall be erected or displayed earlier than thirty (30) days before the election including early voting to which it relates, nor later than three (3) days following such election;" "[s]uch signs shall not exceed five (5) square feet in area per side and forty-eight inches (48") in height;" and "[s]uch signs erected or maintained not in accordance with the provisions of this subsection shall be the responsibility of the owner of the property upon which the sign is located, shall be deemed a public nuisance, and may be abated, without notice, by such property owner, the candidate, or person

advocating the vote described in the sign, or the code enforcement official or his/her designee[.]" *Id.* at 23–24.

III. LEGAL STANDARD

When deciding whether to issue a preliminary injunction,

> [C]ourts must examine four factors . . . : (1) whether the movant has demonstrated a substantial likelihood of success on the merits, (2) whether the movant will suffer irreparable injury absent injunction, (3) whether a preliminary injunction would cause substantial harm to others, and (4) whether the public interest will be served by an injunction.

Flight Options, LLC v. Int'l Bhd. of Teamsters, Loc. 1108, 863 F.3d 529, 539–40 (6th Cir. 2017); *see also Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001). "[T]he four considerations applicable to preliminary injunction decisions are factors to be balanced, not prerequisites that must be met." *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985). Likelihood of success on the merits "is the most important factor," *see Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009), though it is not necessarily dispositive, *see O'Toole v. O'Connor*, 802 F.3d 783, 792 (6th Cir. 2015).

IV. ARGUMENT

A. THE PLAINTIFF IS SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS OF HER CLAIMS.

The Plaintiff is substantially likely to succeed on the merits of all of her claims. Reference to straightforward First Amendment law supports this conclusion.

1. Ms. Pereira's political sign is not obscene.

While taking past enforcement action against Ms. Pereira, the Defendants highlighted two provisions of the City of Lakeland's Municipal Code that prohibit obscenity. The first provision of the City of Lakeland's Municipal Code that Ms. Pereira was accused of violating states that prohibited signs include: "Signs which show pictures

of human figures, animals or food, and signs which contain characters, cartoons or statements of an obscene, indecent or immoral character which would offend public morals or decency[.]" Ex. 2 to Compl. (Doc. 1-2) at 4. The second provision of the City of Lakeland's Municipal Code that Ms. Pereira was accused of violating states that prohibited signs include: "Any sign that exhibits statements, words or pictures of an obscene nature." *Id.* at 6.

Ms. Pereira's unredacted sign is not obscene, though. *See, e.g., Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 594 U.S. 180, 185–191 (2021) (statement "Fuck school fuck softball fuck cheer fuck everything" was "not obscene as this Court has understood that term.") (citing *Cohen v. California*, 403 U.S. 15, 19–20 (1971)). Instead, her sign communicates "pure speech to which . . . the First Amendment would provide strong protection." *Id.* at 191. Thus, the Defendants' position that Ms. Pereira's political sign is obscene—a narrow category of unprotected speech restricted to hardcore pornography that "taken as a whole, lacks serious literary, artistic, political, or scientific value[,]" *Miller v. California*, 413 U.S. 15, 24 (1973)—has no chance of success.

2. The Defendants cannot restrict Ms. Pereira from communicating a "four-letter expletive."

Nor can the Defendants lawfully ban Ms. Pereira's communicative "four-letter expletive[.]" *See Cohen*, 403 U.S. at 26 ("we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. . . . [T]he State may not, consistently with the First and Fourteenth Amendments, make the simple public display here involved of this single four-letter expletive a criminal offense."). It is clear from the Defendants' past enforcement actions against Ms. Pereira that their dispositive concern about Ms. Pereira's unredacted sign is

that it displays a "cuss" word." *See* Ex. 2 to Compl. (Doc. 1-2) at 2 ("Remove the sign displaying the cuss word or cover the word to where it cannot be viewed from the road and neighboring properties."); Ex. 5 to Compl. (Doc. 1-5) at 2 ("The Code Enforcement Officer observed the following: A residential yard sign displaying a cuss word. Sign was altered and came into compliance on 1/24/2024. It was altered again on 1/30/2024 to show the entire cuss word."). That "cuss" word enjoys full First Amendment protection in the forum in which it has been displayed, though. *Cf. Mahanoy Area Sch. Dist.*, 594 U.S. at 191; *Cohen*, 403 U.S. at 26.

Thus, Ms. Pereira is likely to prevail—doubly so because Ms. Pereira's sign displays "core political speech" for which First Amendment protection is "at its zenith." *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 422–425 (1988).

3. The Defendants are unconstitutionally regulating based on viewpoint.

Viewpoint discrimination is presumptively forbidden. *See Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) ("[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.") (collecting cases). Viewpoint discrimination is regarded as "an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Regardless of the type of forum involved, viewpoint discrimination triggers strict scrutiny. *See Ne. Pennsylvania Freethought Soc'y v. Cnty. of Lackawanna Transit Sys.*, 938 F.3d 424, 436 (3d Cir. 2019) ("viewpoint discrimination is impermissible in any forum.") (citing *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 10 (2018), *Matal v. Tam*, 582 U.S. 218, 243–44 (2017), *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111–12 (2001), and

Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 829 (1995)). Thus, "while many cases turn on which type of 'forum' is implicated, the important point here is that viewpoint discrimination is impermissible in them all." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1936 (2019) (Sotomayor, J., dissenting) (citing *Good News Club*, 533 U.S. at 106).

A law that regulates speech for offensiveness inherently and necessarily discriminates based on viewpoint. *See Matal*, 582 U.S. at 220 ("That is viewpoint discrimination in the sense relevant here: Giving offense is a viewpoint."). The First Amendment also prohibits the government from serving as the arbiter of good taste. *Cf. Cohen*, 403 U.S. at 25 ("one man's vulgarity is another's lyric."). These constitutional limitations—though broadly applicable—are also especially important to enforce vigorously when it comes to political messages communicated by citizens through inexpensive means. *See, e.g., Baker v. Glover*, 776 F. Supp. 1511, 1515 (M.D. Ala. 2001) ("for those citizens without wealth or power, a bumper sticker may be one of the few means available to convey a message to a public audience.") (citing *Members of City Council of City of Los Angeles*, 466 U.S. at 812 n. 30 ("the Court has shown special solicitude for forms of expression that are much less expensive than feasible alternatives and hence may be important to a large segment of the citizenry")).

Here, to the extent Ms. Pereira's sign is also being prohibited (apart from a claim of obscenity) for including statements of "indecent, or immoral character which would offend public morals or decency[,]" Ex. 2 to Compl. (Doc. 1-2) at 4, this regulation is inherently viewpoint-based, presumptively unconstitutional, and cannot withstand constitutional scrutiny. *See Matal*, 582 U.S. at 220. Thus, Ms. Pereira is substantially likely to prevail.

4. The City of Lakeland's content-based sign regulation—which includes especially restrictive treatment of political signs—is hopelessly unconstitutional.

The City of Lakeland's Municipal Code regulates signs differently based on their communicative content. As such, it is presumptively unconstitutional and contravenes clearly established Supreme Court precedent. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 159 (2015) ("The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. . . . The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.").

Under the City of Lakeland's Municipal Code, signs are regulated differently depending on whether they are "works of art with no commercial message," "special event signs for community events," "incidental signs," "window signs," "building marker" signs, "changeable copy signs," "construction signs," "directory signs," "identification signs," "menu board" signs, "model home" signs, "principal ground" signs, "real estate" (but not single-family residential) signs, "residential real estate" signs, "subdivision entry" signs, "temporary signs," "wall signs" (depending on whether they are nonresidential or residential), "temporary residential yard" signs, "suspended signs," or—as here—"political signs." Ex. 3 to Compl. (Doc. 1-3) at 18–33.

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closer than fifteen feet (15') from the edge of pavement or five feet (5') behind a sidewalk, whichever is greater;" "[n]o such sign shall be erected or displayed earlier than thirty (30) days before the election including early voting to which it relates, nor later than three (3) days following such election;" "[s]uch signs shall not exceed five (5) square feet in area per side and forty-eight inches (48") in height;" and "[s]uch signs erected or maintained not in accordance with the provisions of this subsection shall be the responsibility of the owner of the property upon which the sign is located, shall be deemed a public nuisance, and may be abated, without notice, by such property owner, the candidate, or person advocating the vote described in the sign, or the code enforcement official or his/her designee[.]" *Id.* at 23–24.

It is difficult to imagine how such discriminatory restrictions could be justified. Whatever the professed justification, though, the City of Lakeland's sign regime—which regulates signs differently based on their communicative content—"presumptively" violates the constitution, and it is the Defendants' burden to prove that it does not. *See Reed*, 576 U.S. at 163 ("Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.").

* * *

For all of these reasons—or for any of them—Ms. Pereira is substantially likely to prevail on the merits of her claims. Thus, the first factor of the preliminary injunction inquiry—which "often will be the determinative factor"—favors her. *See Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("When a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on

the merits often will be the determinative factor.'") (quoting *Jones*, 569 F.3d at 265).

B. THE PLAINTIFF WILL SUFFER IRREPARABLE INJURY ABSENT PRELIMINARY RELIEF.

"[I]t is well-settled that 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, all First Amendment violations—even minimal ones—constitute "per se irreparable" injuries. *See G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1078-79 (6th Cir. 1994) ("Violations of First Amendment rights constitute *per se* irreparable injury." (cleaned up)); *see also Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) ("The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief."); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty., Tennessee*, 274 F.3d 377, 400 (6th Cir. 2001) ("the Supreme Court has recognized that even minimal infringement upon First Amendment values constitutes irreparable injury."); *Young v. Giles Cnty. Bd. of Educ.*, 181 F. Supp. 3d 459, 465 (M.D. Tenn. 2015) ("Under case law applicable to free speech claims, the loss of First Amendment freedoms, for even minimal periods of time, is presumed to constitute irreparable harm.") (quotation omitted).

Thus, the second preliminary injunction factor weighs in Plaintiff's favor, too.

C. A PRELIMINARY INJUNCTION WOULD NOT CAUSE SUBSTANTIAL—OR ANY— HARM TO OTHERS.

Nor would granting the Plaintiff a temporary injunction harm the Defendants in any material way. The government may not lawfully claim any interest in protecting society from speech that it deems "offensive." *See, e.g., Texas v. Johnson*, 491 U.S. 397,

398 (1989) ("The government may not prohibit the verbal or nonverbal expression of an idea merely because society finds the idea offensive or disagreeable").

Further, "[n]o substantial harm can be shown in the enjoinment of an unconstitutional policy." *Chabad of S. Ohio v. City of Cincinnati*, 233 F. Supp. 2d 975, 987 (S.D. Ohio 2002), *aff'd sub nom. Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427 (6th Cir. 2004); *see also Deja Vu of Nashville, Inc.*, 274 F.3d at 400 ("if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinment.").

D. THE PUBLIC INTEREST WILL BE SERVED BY AN INJUNCTION.

The public interest will be served by a preliminary injunction. Two reasons support this conclusion.

First, "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc.*, 23 F.3d at 1079. Accordingly, because the Plaintiff has established a strong likelihood of success on the merits of her constitutional claims, the public interest favors granting her preliminary injunction. *See id.; see also Young*, 181 F. Supp. 3d at 465 ("Because Plaintiff has established a strong likelihood that Defendants' prohibition of speech violates the First Amendment, the public interest also favors the issuance of a preliminary injunction."); *Chabad of S. Ohio & Congregation Lubavitch*, 363 F.3d at 436 ("the public interest is served by preventing the violation of constitutional rights.").

Second, when the First Amendment is at stake, it is not only the speaker's interests that are implicated; the First Amendment similarly protects the right of the public to "receive" information. *See, e.g., Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 757 (1976) ("in *Kleindienst v. Mandel*, 408 U.S.

753, 762-763[. . .] (1972), we acknowledged that this Court has referred to a First Amendment right to 'receive information and ideas,' and that freedom of speech 'necessarily protects the right to receive.'"). *See also id.* (collecting cases).

Thus, the public interest will be advanced by granting an injunction, and the fourth and final factor of the preliminary injunction inquiry favors granting the Plaintiff an injunction as well.

E. THE PARTIES' CONTROVERSY PERSISTS.

After months of enforcement against Ms. Pereira—including assessing her fees, fines, and threatened contempt—the City of Lakeland informed Ms. Pereira's counsel within less than 24 hours of filing this lawsuit (and within one hour and fourteen minutes of her announcing her intent to seek preliminary relief in it) that they had voluntarily dismissed earlier enforcement proceedings for which they had already secured a judgment against her. It is not even clear at this juncture whether the Defendants are now agreeing that Ms. Pereira may display her unredacted sign without risk, though. To the extent they are voluntarily ceasing enforcement, strategically timed cessation of this nature is also viewed with an appropriately skeptical eye, and the Defendants' behavior here falls well short of "the 'rare instance' where 'subsequent events make it absolutely clear that the allegedly wrongful behavior cannot reasonably be expected to recur and "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation."" *Sullivan v. Benningfield*, 920 F.3d 401, 410 (6th Cir. 2019). Certainly, the "'heavy' burden to demonstrate mootness in the context of voluntary cessation" is not yet met here, *see id.*, and Ms. Pereira's damages claims cannot be mooted anyway.

V. CONCLUSION

For the foregoing reasons, all four factors of the preliminary injunction inquiry

favor issuing a preliminary injunction. Thus, pending a final adjudication of the merits of her claims, this Court should issue a preliminary injunction enjoining the Defendants from taking further enforcement action against Ms. Pereira for displaying her unredacted political yard sign.

Respectfully submitted,

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[1] WDTN admission pending.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2024, a copy of the foregoing and all exhibits and attachments were sent via CM/ECF, USPS Mail, and/or via email, to:

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