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August 6, 2021

Mayor John Wirth
Administrator William Jones
City of Mequon
11333 North Cedarburg Road
Mequon, WI 53092

Via e-mail only to:
mayor@ci.mequon.wi.us
wjones@ci.mequon.wi.us

RE: First Amendment Violation – “RecallMTSD.com” Sign

Dear Mayor Wirth and Administrator Jones:

I am an attorney with the Wisconsin Institute for Law & Liberty (WILL), which is a non-profit law firm dedicated to enforcing the rule of law and protecting constitutional rights. I have been retained by Amber Schroeder to resolve a dispute with the City of Mequon over a political sign bearing the message: “RecallMTSD.com.” The City’s sign ordinance, and its attempts to enforce that ordinance, violate our client’s First Amendment rights. We are asking you to cease and desist this unconstitutional enforcement.

My client is a member of a grassroots organization supporting the recall of several school board members in the Mequon-Thiensville School District (MTSD). As part of that effort, Ms. Schroeder collects signatures by setting up a small table on public property near the Mequon Pool (pictured below) and also near Metro Market on Port Washington Road. As you can see, she displays a small vinyl sign bearing a political message, “RecallMTSD.com,” to advertise the recall effort.



Police officers on at least four occasions have made contact with my client asking her to take down the sign. She has complied every time. The officers have said they are asking that the sign be taken down based on an order from Mayor Wirth. On the last occasion, the Mequon police officer told Ms. Schroeder to take down the sign, and that if she put up the sign again, the officer would issue a citation.

The Mequon Police Officer claimed that the sign violated Mequon Ordinance § 62-7(22). This section provides that the following types of signs are prohibited: “Signs, cards, banners, pictures, handbills, sign posters, advertising, or notice of any kind, on any curb, street-walk, public thoroughfare surface, fence, board, barrel, box, case, railing, pole, post, bridge, tree, barricade, material, bridge fender, dock, pile, building or structure of any kind on public ground, public waterway or upon any structure projecting over any public thoroughfare, public ground or public waterway within the city except by City of Mequon authorization.”

It appears that through this ordinance, the City purportedly bans all “banners” “except by City of Mequon authorization.” Thus, the general rule is that banners are not banned in the City, they just require prior authorization from the City. Prior restraints like this are presumptively unconstitutional, unless the City provides procedural safeguards, which it does not in this case. *See Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).

In addition to the ordinance’s unconstitutionality as a prior restraint, the City provides multiple content-based exceptions to the general rule. For example, under Mequon Ordinance § 62-8, various types of signs are exempted from the City’s general permitting requirement, including: certain wall signs, bulletin boards, memorial signs or tables, building name signs, traffic signs, legal notices, signs identifying farm operations, certain flags or banners (specifically, only those which represent the United States, State of Wisconsin, Ozaukee County or the City), directional signs, interior signs, yard sale signs, and others.

The City’s sign ordinance regulates various types of signs differently, and makes determinations as to whether or not City approval is required, based solely upon the content of that sign.

“[S]igns are a form of expression protected by the Free Speech Clause.” *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994). The most recent U.S. Supreme Court decision on point is *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). In that case, the Town of Gilbert in Arizona restricted the size, duration, and location of temporary directional signs. In striking down the ordinance, the Court held that the ordinance was not content neutral because it treated signs differently based on the “communicative content of the sign.” *Id.* at 165. The City of Mequon has not updated its ordinance since this decision in 2015.

Under *Reed*, Mequon's sign ordinance is not content neutral. Ms. Schroeder's sign is illegal, yet several other categories of signs would be permissible in the same setting and location. For example, the ordinance would allow Ms. Schroeder to display a banner representing the City of Mequon, a flag representing Ozaukee County, a sign identifying farm operations, a directional sign for a business or organization, or a yard sale sign. Mequon also allows other signs conveying messages, including bulletin boards containing the message of a public, charitable, or religious institution, wall signs to identify the owner of residential buildings, memorial signs or tablets, and "special decorative signs" approved by the City. Yet the City does not permit a temporary vinyl sign conveying the message "RecallMTSD.com." Such an ordinance is not content neutral.

Restrictions on speech based upon the content of that speech, such as the City's sign ordinance, "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163 (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 395 (1992)); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115, 118 (1991). No such government interest exists that would justify Mequon's actions here.

The City's sign ordinance therefore violates my client's constitutional rights. Please respond immediately, in writing, allowing Ms. Schroeder to display a banner associated with her signature gathering efforts while collecting such signatures so that she may do so without fear of prosecution from the City.

Given the nature of this issue and the time-sensitive nature of the ongoing signature gathering effort, if I do not receive such a response from the City by Monday morning, August 9 at 10 a.m., I will immediately file suit seeking injunctive relief and damages, including attorney fees.

Finally, pursuant to Wisconsin Public Records Law, Wis. Stat. 19.31 et. seq., I am requesting the following records from all city personnel, including the Mequon Police Department, the Mayor, and all other city personnel:

- All records from May 1, 2021 to present referencing the MTSD recall effort;
- All records from May 1, 2021 to present any communications regarding signs or banners;
- All records from May 1, 2021 to present regarding enforcement of Mequon Ordinances § 62-7(22), including any police reports documenting contact with our client or other similar individuals collecting recall signatures.

The Public Records Law defines “record” to include information that is maintained on paper as well as electronically (such as data files, text message, e-mails, and other forms of electronic communication). Wis. Stat. §19.32(2).

If these records are stored electronically, please provide them in that electronic format via email to Dan@will-law.org. Otherwise, they may be mailed to the address above.

Please also be aware that the Public Records Law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest, and only in an exceptional case may access be denied.” Wis. Stat. § 19.32(1). If you deny our request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny my request. Wis. Stat. §19.35(4)(a). Please advise us before processing this request if the total cost will exceed \$50.

As you know, the law requires you to respond to this request “as soon as practicable and without delay.” Wis. Stat. §19.35(4)(a).

All future communications on this matter should be directed to my attention.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

A handwritten signature in black ink, appearing to read "Dan Lennington", with a stylized flourish at the end.

Daniel P. Lennington
Deputy Counsel
608-572-5358
Dan@will-law.org

cc: Mequon City Attorney Brian Sajdak (*via e-mail only to brian@wrslegal.net*)
Mequon Chief of Police Patrick Pryor (*via email only to ppryor@ci.mequon.wi.us*)