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June 6, 2022

Ms. Laura Solis, Clerk
Town of New Chester
629 Mason St.
PO Box 69
Grand Marsh, WI 53936

Via Electronic Mail Only To:
newchestertownclerk@gmail.com

RE: Town Ordinance 02-2020

Town Clerk Solis,

We have been retained by Mr. Steve Blake, a resident of the Town of New Chester (herein “the Town”), to represent him regarding the constitutionality of Town Ordinance 02-2020, entitled “Town of New Chester Distribution of Political Materials on Town Property Ordinance” (herein “the Ordinance”).

Mr. Blake has previously distributed “political materials,” as that term is defined by the Ordinance, on Town property, and would like to do so again in the future. However, the Ordinance appears to prohibit such activity. We believe the ordinance is unconstitutional for the reasons stated herein, and we request that the Town immediately repeal it and confirm to Mr. Blake that it will not be enforced in the interim.

The Ordinance

The Ordinance prohibits the distribution of “political materials” on any property “owned, occupied, or controlled” by the Town of New Chester. Ordinance, § IV(B). Such prohibited “political materials” are defined by the Ordinance to include “signs, handbills, flyers, and any other printed materials that supports or opposes a candidate for a partisan office or it supports or opposes a ballot measure.” Ordinance, § IV(A).

The Ordinance states it may be enforced by “any law enforcement officer authorized to enforce laws of the state of Wisconsin” and as may be stated in an additional Town citation authority ordinance. Ordinance, § V. The Ordinance also incorporates by reference the penalties provided by Wis. Stat. § 943.13(1m). Ordinance, § VI. Wis. Stat. § 943.13(1m) references a “Class B Forfeiture.” Pursuant to Wis. Stat. § 939.52(3)(b) a “Class B Forfeiture” is an amount “not to exceed \$1,000”.

Thus, the ordinance purports to prohibit the distribution of political materials on Town property, and calls for enforcement of up to a \$1,000 fine by any law enforcement officer in Wisconsin.

Constitutionality of the Sign Ordinance

The distribution of political materials is a protected exercise under the First Amendment. The United States Supreme Court has made clear that “handing out leaflets in the advocacy of a politically controversial viewpoint—is the essence of First Amendment expression [n]o form of speech is entitled to greater constitutional protection” *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995). “When the government makes it more difficult to engage in these modes of communication, it imposes an especially significant First Amendment burden.” *McCullen v. Coakley*, 573 U.S. 464, 489 (2014). The Ordinance is a flagrant violation of Mr. Blake’s Free Speech rights as guaranteed by the First Amendment.

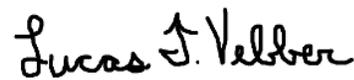
The Ordinance not only prohibits First Amendment protected exercises, but it does so on public land. Free speech regulation on public land is an area that strikes at the heart of Free Speech protections and will be evaluated with strict scrutiny. *See Snyder v. Phelps*, 562 U.S. 443, 451 (2011). Public ways and sidewalks “occupy a ‘special position in terms of First Amendment protection’ because of their historic role as sites for discussion and debate.” *Coakley*, 573 U.S. at 476 (citation omitted).

Furthermore, the U.S. Supreme Court has unequivocally stated that “[c]ontent-based regulations are presumptively invalid.” *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992). The Ordinance is undeniably a content-based regulation on speech. Indeed, it only applies to “political” speech. But further, it only applies to “partisan” political speech and “ballot measure[s].” Ordinance, § IV(A). Under the ordinance, an individual could stand outside the Town hall and distribute a flyer imploring his neighbors to vote for a candidate for the New Chester Town Board (a nonpartisan office) but could not distribute a similar flyer for a candidate for State Assembly (a partisan office).

The Ordinance is an unconstitutional exercise of the Town’s authority and blatantly restricts Mr. Blake’s ability to engage in First Amendment protected expression. We request that the Town take immediate steps to repeal Ordinance 02-2020 and to confirm that the Ordinance will not be enforced in the interim.

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

Sincerely,
WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.


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