UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

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TIMOTHY AND MEGAN FLOREK,

Plaintiffs,

Case No. 23-CV-122

v.

MICHAELA BEDORA, in her individual and official capacities, and the CITY OF NEENAH,

Defendants.

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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTIONS FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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## INTRODUCTION

The potential rezoning of Shattuck Middle School for a proposed development has generated considerable debate among the residents of the City of Neenah, many of whom are opposed to any attempt to rezone the property.[1] Plaintiffs Timothy and Megan Florek ("the Floreks") are among those residents who oppose the rezoning of the property in connection with a currently proposed development. Like many other

[1] *See e.g.,* https://www.postcrescent.com/story/news/local/2022/12/23/neenah-school-board-oks-extensionfor-shattuck-middle-school-offer/69754556007/; https://www.wearegreenbay.com/news/local-news/neighbors-oppose-shattuck-middle-school-property-development-plan/.

residents holding this view, the Floreks have displayed a yard sign expressing their opinion on their private, residential property.

Yet the City sees things differently. By letter dated January 9, 2023, Defendants ordered the Floreks to take down their sign. This was a mistake. While City officials may disagree with the Floreks and others who oppose the rezoning of the property, the City (through the Police Department and Code Enforcement) does not get to choose sides, determining who can speak on this issue and in what manner. This is a fundamental tenet of the First Amendment, and the City should know better. Defendants' entire sign ordinance, which picks and chooses among signs based on content, and applies different restrictions based on that content, is unconstitutional under the First Amendment. It has been nearly eight years since the Supreme Court decided *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). Yet the City's sign ordinance remains on the books, and Defendants now threaten the Floreks with that unconstitutional ordinance, depriving them of their First Amendment rights.

For these reasons, the Floreks seek a temporary restraining order and a preliminary injunction to protect their First Amendment right to display their yard sign.

**FACTS**

Plaintiffs Timothy and Megan Florek have displayed a small sign in their front yard which reads, "Don't Rezone Shattuck Middle School Leave R1 Alone." Decl. of Timothy Florek, ¶¶ 4-5

In a letter dated January 9, 2023, Defendant Michaela Bedora, as a Code Enforcement Officer on behalf of Defendant City of Neenah, sent the Floreks a "Notice of Violation," demanding that the Floreks remove the aforementioned yard sign from their property by February 8, 2023. Decl. of Timothy Florek, ¶ 6-8, Ex. A.

This initial "Notice of Violation" states that the Floreks must remove their sign because the sign allegedly violates the City's 30-day limitation on the length of time in which a "portable sign" may be displayed on residential property within a given 90-day period. *See* City of Neenah Municipal Code Section 24-132(8);[2] *see also*, Decl. of Timothy Florek, Ex. A.

The initial "Notice of Violation" further states that the Floreks' sign is considered a "temporary sign" that transgresses the City's "portable sign" restriction if displayed for more than 30 days because there is "nothing pending with city council regarding re-zoning Shattuck Middle School." Decl. of Timothy Florek, Ex. A. However, the City also notes that "if there is a re-zoning request filed again with the city," the Floreks' sign could then be displayed because the issue would be "pending." *Id.*

Following receipt of the initial "Notice of Violation" from Defendants, the Floreks retained legal counsel to respond. *Id.* at ¶ 10. The Floreks' response was sent by a letter dated January 19, 2023, informing Defendants that the ordinance, and

[2] A copy of the City's sign ordinance, Chapter 24 of the Neenah Municipal Code, is attached as Appendix A. It can also be found online at https://library.municode.com/wi/neenah/codes/code_of_ordinances?nodeId=SPBLADERE_CH24SI (last accessed Jan. 29, 2023).

their enforcement of it, violated the Floreks' First Amendment rights. Decl. of Timothy Florek, Ex. B. The response requested the initial "Notice of Violation" be withdrawn within five days. Decl. of Timothy Florek, Ex. B.

But instead of withdrawing the initial "Notice of Violation," Defendants instead mailed an amended "Notice of Violation" identical to the first, except for the removal of their statement that "if there is a re-zoning request filed again with the city," the Floreks' sign could then be displayed because the issue would be "pending." *Id.* at ¶¶ 14-16; Ex. C. Defendants provided no other context or explanation as to why an amended "Notice of Violation" was sent and did not otherwise respond to the Floreks' response letter.

The City has a comprehensive sign ordinance, generally prohibiting signs from being displayed without a permit. *See* Chapter 24 of the City of Neenah Municipal Code, attached hereto as Appendix A. Of particular relevance here, Sections 24-132 and 24-133 of the sign ordinance contain exemptions for certain signs that do not require a permit. These sections of the sign ordinance classify signs based on their content and differentiate between those types of signs that do and do not have time limits. These two code sections also impose numerous other requirements, which again depend on the content of the sign.

Section 24-132 of the ordinance lists various content-based sign classifications and imposes differing regulations and arbitrary time limits for each classification type. For example, under Section 24-132, the City differentiates between construction signs, political campaign signs, real estate signs, promotional signs, yard sale signs,

and subdivision signs. Each such type of sign—based on its content—is regulated in different ways.

The City apparently classifies the Floreks' sign as a "portable sign" under Section 24-132(8) of the sign ordinance. *Id.* Under Section 24-132(8), a residential property may only display one such "portable sign" of six square feet or less, and only for a period of 30 days within a 90-day period. Other signs, with different content, are treated differently.

While Section 24-132 contains time limits for the display of the listed content-based sign classifications, Section 24-133 of the sign ordinance categorizes other types of signs according to their content but does *not* impose any time limits on their display. Under Section 24-133, the City allows a variety of signs to be displayed indefinitely, including: directional and instructional signs, government signs, home occupation signs, house number and name plate signs, memorial signs, no trespassing and no dumping signs, public notices, and neighborhood identification signs. The Floreks could, for example, according to Section 24-133(8), indefinitely display a "no trespassing" or "no dumping" sign in their front yard, or advertise a home business; but they are limited to 30-days' time for their chosen political message. Further, under Section 24-133(3) any "public officer in the performance of his public duty" may erect a sign that has *no limit* on when it needs to be taken down. That is, the City favors its speech over that of its citizens.

As described above, the City's sign ordinance is content-based by design: the ordinance regulates signs differently based on the content of the sign, and Defendants

cannot plausibly contend otherwise. By Defendants' own admission, they would not have sent the initial "Notice of Violation" if the sign contained a different message on a different issue. Decl. of Timothy Florek, Ex. A. Under the City's sign ordinance, Defendants must read and review the content of a given sign to determine how to regulate it, either more or less favorably.

The enforcement section of the City Code provides that failure to comply with the ordinance carries a forfeiture of not less than $10, nor more than $500 for the first offense, and not less than $25 nor more than $1000 for each subsequent offense. *See* City of Neenah Municipal Code, Section 1-20(c). Each day a sign is displayed in violation of the City's sign ordinance constitutes a separate offense. *See* City of Neenah Municipal Code, Section 1-20(d).

The Defendants have already taken adverse enforcement action against the Floreks and have refused to acknowledge the Floreks' First Amendment right to display their sign on their private property. The Floreks' response letter notified Defendants of their First Amendment violation, but the Defendants' position has not changed. Consequently, the Floreks reasonably fear that further adverse action, including prosecution and significant forfeitures, will be enforced against them unless a temporary restraining order and preliminary injunction are granted. Decl. of Timothy Florek, ¶¶ 17-19.

**ARGUMENT**

Since Defendants have ordered the Floreks to remove their sign by February 8, 2023, the Floreks' request that the Court grant their motion and immediately enter

a temporary restraining order enjoining Defendants from taking further action to enforce the sign ordinance while the Court considers the Floreks' motion for a preliminary injunction. The Floreks should not be in jeopardy of prosecution and substantial fines until the Court has had an opportunity to rule on the Floreks' claim.

The Floreks also request that the Court issue a preliminary injunction preventing enforcement of the ordinance against the Floreks pending a decision on the merits, after the parties have had an opportunity to fully brief the issues and the Court has a chance to hear oral argument (if the Court desires such argument).

## I. Standard of Review.

The standards for issuing temporary restraining orders are identical to the standards for preliminary injunctions. *See Long v. Bd. of Educ., Dist.* 128, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001). A party seeking a temporary restraining order or preliminary injunction must demonstrate "(1) some likelihood of succeeding on the merits, and (2) that it has no adequate remedy at law and will suffer irreparable harm if preliminary relief is denied." *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992) (citation omitted). If a plaintiff meets these factors, the court proceeds to "a balancing phase, where it must then consider: (3) the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied; and (4) the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Cassell v. Snyder*s, 990 F.3d 539, 545 (7th Cir. 2021).

In First Amendment cases like this one, "the loss of First Amendment freedoms . . . unquestionably constitutes irreparable injury," *Am. C.L. Union of Illinois v.*

*Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion), and "injunctions protecting First Amendment freedoms are always in the public interest." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006). Thus, the likelihood of success "is usually the decisive factor," *Wisconsin Right To Life, Inc. v. Barland*, 751 F.3d 804, 830 (7th Cir. 2014), such that the analysis often "begins and ends with … the merits." *Higher Soc'y of Indiana v. Tippecanoe Cty., Indiana*, 858 F.3d 1113, 1116–18 (7th Cir. 2017) (citation omitted).

## II. The Floreks are entitled to injunctive relief.

The City's sign ordinance is content-based on its face, and it constitutes an arbitrary and unreasonable restriction on protected speech. Defendants have violated the Floreks' First Amendment rights by using this unconstitutional ordinance to demand the removal of the Floreks' sign and to silence their expression. These actions, in addition to the threat of further punishment for non-compliance, have an ongoing chilling effect on the Floreks' First Amendment right to freedom of expression through their yard sign.

### A. The Floreks are likely to succeed on the merits.

The Floreks are likely to succeed on each of their three independent claims against Defendants. First, the sign ordinance is plainly an unconstitutional content-based regulation on speech. Second, the ordinance is an arbitrary and unreasonable restriction on political speech. Third, Defendants' actions to enforce the ordinance constitute retaliation against the Floreks for exercising their First Amendment rights. To meet the standard for preliminary relief, the Floreks must show a

likelihood of success on the merits for any one of these three claims. As explained below, the Floreks easily satisfy this standard for all three claims.

**1. The sign ordinance is unconstitutional because it is content-based.**

The U.S. Supreme Court has recognized that "signs are a form of expression protected by the Free Speech Clause." *City of Ladue v. Gilleo* 512 U.S. 43, 48. Because signs are protected by the Free Speech Clause, any sign ordinance must be content-neutral to be legally enforceable. *See generally, Reed v. Town of Gilbert*, 576 U.S. 155 (2015). Restrictions on speech based upon the content of that speech are "presumptively unconstitutional," and the government must show that such restrictions 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, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115, 118, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)).

This case is controlled by *Reed*, which presented nearly identical legal questions. In that case, the Town of Gilbert, Arizona adopted a sign ordinance, like the City here, that "identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions." *Reed*, 576 U.S. at 159. A church, led by its pastor Clyde Reed wanted to advertise Sunday church services and so it placed various temporary signs around the Town. When the Town's Sign Code Compliance manager cited the church for violating the code, Reed sued the Town. In deciding the case in favor of Reed—striking down the Town's sign ordinance—the Supreme Court held that the sign code applied to signs "depend[ing]

entirely on the communicative content of the sign." *Id*. at 164. For example, the ordinance gave differing treatment to "ideological signs," versus "political signs," versus "temporary directional signs relating to a qualifying event." *Id*. at 159. But these distinctions are, of course, content based and therefore unconstitutional: "Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination." *Id*. at 169.

As was in *Reed*, here too, a municipality is assigning differential treatment based on the content of the sign. Defendants have classified the Floreks' sign under Section 24-132 of the ordinance. Section 24-132 of the ordinance lists various content-based sign classifications and imposes differing regulations and arbitrary time limits for each classification type. By contrast, Section 24-133, while similarly categorizing other types of signs according to their content, does not contain any time limits on display, affording more favorable treatment to these particular signs. This entire system is content-based and under *Reed*, must be analyzed under strict scrutiny. But Defendants can establish no argument that the City's sign ordinance is narrowly tailored to serve a compelling state interest.

Indeed, what possible compelling state interest is served by distinguishing between construction signs, political campaign signs[3], real estate signs, promotional

[3] By its terms, "political campaign signs" only include signs on behalf of candidates for public office or measures on election ballots, neither of which would apply to the Floreks' sign.

signs, yard sale signs, and subdivision signs and regulating each in different ways? Similarly, what compelling state interest is served by distinguishing all of the above from directional and instructional signs, government signs, home occupation signs, house number and name plate signs, memorial signs, no trespassing and no dumping signs, public notices, and neighborhood identification signs, and treating this second category differently from the first category? Perhaps most importantly, what compelling state interest is served by treating all of the above more favorably than the Floreks' political sign opposing city action on a topic of public concern?

Moreover, because the content of the Floreks' sign does not fit into the content-based sign classifications contained under Section 24-132 or 24-133, the Defendants have resorted to a default classification of the Floreks' message as a "portable sign." But yet again, this classification is entirely content based. For example, if the Floreks' sign instead said "for sale by owner," it would be classified by the City as a "real estate sign" under Section 24-132(3) of the ordinance. When a sign bears this "for sale" message, the City allows the sign to be larger (up to 32 square feet), and in some cases, two signs may be displayed. In addition, the City would allow the "for sale" sign to be displayed on the property for a seemingly indefinite period of time (*e.g.*, the Code requires the sign to be removed within 30 days after the sale of the property, which may never happen). But, in this case, because the Floreks' have chosen to display a sign containing a political message, instead of a sign containing a "for sale" message, the City classifies it as a "portable sign," thereby limiting the Floreks' political statement opposing city action to a single sign of smaller size and subjecting

them to more stringent time limitations for displaying their sign than virtually any other category.

It is immaterial that the particular "portable signs" category of signs regulated in Section 24-132(8) of the sign ordinance, called "portable signs" could itself, be argued to be a "content-neutral" subcategory of the ordinance – because the only reason the Floreks' sign has been assigned to the *portable sign* category is because *the content of the sign does not fit* into a *different* category. That is, the City cannot classify the Floreks' sign without looking to its content to determine that it does not fall into a more favorable regulatory category under the sign ordinance. Accordingly, the City's ordinance is necessarily content-based. Likewise, Defendants have further explicitly stated that the initial "Notice of Violation" would not even have been sent if the sign contained a different message on a different issue "pending" before the City's common council. Decl. of Timothy Florek, Ex. A.

Strict scrutiny "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 576 U.S. at 171 (citation omitted). As explained, Defendants have no compelling interest to allow signs with one particular message while disallowing others; they have no legitimate state interest in favoring "for sale" signs (or directional and instructional signs, government signs, home occupation signs, house number and name plate signs, memorial signs, no trespassing and no dumping signs, public notices, and neighborhood identification signs) over the Floreks' simple sign opposing the City's potential rezoning of Shattuck Middle School.

The Floreks are likely to succeed on the merits of this claim.

**2. The sign ordinance is an arbitrary and unreasonable restriction on protected speech.**

In addition to being unconstitutionally content-based, the sign ordinance imposes arbitrary and unreasonable restrictions on protected speech, including political speech, in violation of the First Amendment; and the Floreks are likely to succeed on the merits under this separate and independent basis.

The U.S. Supreme Court has made clear that "commenting on matters of public concern [is a] classic form[] of speech that lie[s] at the heart of the First Amendment . . . ." *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 377 (1997). Laws that burden such political speech are subject to strict scrutiny and must be narrowly tailored to serve a compelling governmental interest. *Ezell v. City of Chicago*, 651 F.3d 684, 707 (7th Cir. 2011); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340, 130 S. Ct. 876, 175 L.Ed.2d 753 (2010).

It is indisputable that the rezoning of the property on which Shattuck Middle School is located is a matter of public concern constituting political speech. But Defendants have determined that the Floreks may not have a sign in their yard for more than 30 days within a 90-day period expressing their position on the issue. The Constitution does not allow Defendants to police speech in this fashion.

If, instead, the Floreks' sign read "No Trespassing," or "For Sale", as opposed to commenting on a political matter within the City, the Floreks would be allowed to display the sign without threat of prosecution. The City's initial "Notice of Violation" also stated that the City's sign ordinance would allow the Floreks to lawfully display

their sign as a "political sign" [4] "if there is a re-zoning request filed again with the city" but not otherwise for an issue not "pending." Yet, again, the rezoning of Shattuck Middle School is a matter of public concern, implicating political speech, regardless of whether the City Council is currently planning to vote on a rezoning effort or not.

Defendants' restrictions and their results demonstrate the whimsical nature characterizing the sign ordinance. The sign ordinance imposes arbitrary and unreasonable restrictions on political speech for which the City has no justification. Accordingly, independent of its unconstitutionality as a content-based sign ordinance, the sign ordinance is an unconstitutional restriction on protected political speech.

The Floreks are also likely to succeed on the merits of this claim.

**3. Defendants cannot punish the Floreks for engaging in protected expression.**

Finally, the Floreks are also likely to succeed on the merits of their third claim: through the "Notice of Violation," Defendants have sought to punish the Floreks for their exercise of protected political speech in violation of the First Amendment.

The First Amendment prohibits government officials from "subjecting an individual to retaliatory actions for engaging in protected speech." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019) (citation omitted). And, any form of penalty for protected speech "is forbidden." *Surita v. Hyde*, 665 F.3d 860, 871 (7th Cir. 2011).

[4] While there is no category in the sign ordinance for a "political sign," there is a category for a "political campaign sign." However, as explained previously in footnote 3, the City does not apply this category to the Floreks' sign.

The Floreks, alleging that they have been penalized for protected speech, must show three things: "(1) [that] they engaged in activity protected by the First Amendment; (2) they suffered a deprivation that would likely deter First Amendment activity; and (3) the First Amendment activity was at least a motivating factor in the [official's] decision." *Thayer v. Chiczewski*, 705 F.3d 237, 251 (7th Cir. 2012); *see Nieves,* 139 S. Ct. at 1725. The demonstration of each of these criteria show that Defendants have violated the Floreks' First Amendment rights.

First, the Floreks are clearly engaged in activity protected by the First Amendment. As noted *supra*, signs "are a form of expression protected by the Free Speech Clause," *City of Ladue v. Gilleo* 512 U.S. 43, 48, and "commenting on matters of public concern [is a] classic form[] of speech that lie[s] at the heart of the First Amendment . . . ." *Schenck*, 519 U.S. at 377.

The proposed rezoning of the property on which Shattuck Middle School is located has been a matter of substantial community interest and public concern, with many City residents opposed to past, present or future attempts by private interests or City officials to rezone it. By using a yard sign to express their opinion about potential city action, the Floreks are clearly exercising their First Amendment rights.

With respect to the second criterion, there is no question that Defendants' "Notice of Violation" and the threat of forfeitures for non-compliance constitute deprivations of First Amendment rights that will deter continued display of the sign. In fact, that is the very purpose of the "Notice of Violation" from Defendants.

The test for deterrent effects is "whether the alleged conduct by defendants would likely deter a person of ordinary firmness from continuing to engage in protected activity." *Surita,* 665 F.3d 860, 878 (citation omitted). The Seventh Circuit has previously found that a person of "ordinary firmness" would be deterred from engaging in constitutionally-protected activity if s/he were "called [in]to a meeting by a uniformed officer and told by the police chief and city attorney" that if they held a rally, a "never-used Assembly Ordinance would be enforced, a $1500 permit fee had to be paid, and failure to comply with the Assembly Ordinance" would violate the law. *Surita,* 665 F.3d 860, 878–79 (7th Cir. 2011). By analogy, the same logic applies here. The Defendants have told the Floreks that their sign violates the City's sign ordinance. If the Floreks do not remove their sign by February 8, 2023, they will face significant penalties for their violation of law. This is a tremendous deterrent for engaging in constitutionally protected speech, though the penalty and deterrent effect on freedom of speech "need not be great in order to be actionable." *Surita,* 665 F.3d at 879 (citing *Bart v. Telford,* 677 F.2d 622, 625 (7th Cir.1982)).

Finally, the Floreks' First Amendment activity was undoubtedly a motivating factor in the Defendants' decision to demand the Floreks remove their sign. The Defendants have engaged in a content-based review of the sign's message, categorizing the sign according to the category that best supports forcing the Floreks to remove it. By their own admission, Defendants *would not have sent* the initial "Notice of Violation" letter if the sign contained a different message regarding a different issue. Decl. of Timothy Florek, Ex. A. Therefore, the "selective nature of the

application of the ordinance" strongly suggests that the Floreks' sign, and the constitutionally protected expression that it contains, was the "motivating, or even but-for, cause of" Defendants' "Notice of Violation." *Surita*, 665 F.3d at 879.

In summary, Defendants have violated the Floreks' First Amendment rights by retaliating against them for engaging in protected speech. The Floreks clearly have a First Amendment right to display the sign on their residential property as a means of expressing their opinions on a controversial issue. Defendants' continuing failure to acknowledge this right (even after notice from Floreks' counsel) demonstrates that the retaliation will continue if a temporary restraining order and preliminary injunction are not granted.

* * *

A likelihood of success on any one of their three claims is enough to warrant the issuance of a temporary restraining order and preliminary injunction. For the foregoing reasons, the Floreks are very likely to succeed on the merits for not just one of their claims, but for *all three* of their claims. The temporary restraining order and injunction should be issued.

### B. The Floreks have no adequate remedy at law and will suffer irreparable harm if preliminary relief is denied.

Constitutional violations constitute "proof of an irreparable harm." *Preston v. Thompson*, 589 F.2d 300, 303, n.3 (7th Cir. 1978). Here, the Floreks' constitutional rights have been, and are continuing to be, denied by Defendants. This First Amendment violation subjects the Floreks to irreparable harm.

Further, the Floreks have no adequate remedy at law. Irreparable harm is "harm that cannot be repaired and for which money compensation is inadequate." *Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020) (citation omitted). "Money damages are not adequate" for the loss of First Amendment freedoms. *Christian Legal Soc'y*, 453 F.3d at 859. Additionally, "[i]mposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 770–71 (10th Cir. 2010). Damages are not available in this case because of sovereign immunity: "Federal constitutional claims for damages are cognizable only under Bivens." *Loumiet v. United States*, 828 F.3d 935, 945 (D.C. Cir. 2016). Since monetary relief is not available here, the harm is irreparable.

### C. A balance of the harms and the public interest support issuing preliminary relief.

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"It is 'always in the public interest to prevent the violation of a party's constitutional rights.'" *Faust v. Vilsack*, 519 F. Supp. 3d 470, 477 (E.D. Wis. 2021) (quoting *Déjà vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cty., Tennessee*, 274 F.3d 377, 400 (6th Cir. 2001)). The "public interest would be served" by an injunction against a constitutional violation. *Preston*, 589 F.2d at 303, n.3.

Finally, a temporary restraining order or an injunction will not cause any harm to Defendants. With respect to Defendants, the "government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented." *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017); *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004) ("[N]o substantial harm can be shown in the enjoinment of an unconstitutional policy.").

## CONCLUSION

For the foregoing reasons, the Floreks respectfully request that this Court immediately enter a temporary restraining order enjoining Defendants from taking further action to enforce the sign ordinance by February 8, 2023, and further grant the Floreks' motion for a preliminary injunction during the pendency of this litigation.

Dated: January 30, 2023

Respectfully Submitted,

WISCONSIN INSTITUTE FOR
LAW & LIBERTY, INC.

s/ *Lucas T. Vebber*

Richard M. Esenberg (WI Bar No. 1005622)
Lucas T. Vebber (WI Bar No. 1067543)
Cara M. Tolliver (WI Bar No. 1112818)
330 East Kilbourn Avenue, Suite 725
Milwaukee, WI 53202
Telephone: (414) 727-9455
Facsimile: (414) 727-6385
Rick@will-law.org
Lucas@will-law.org
Cara@will-law.org
*Attorneys for Plaintiffs*