

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

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.

COMPLAINT

Plaintiffs Timothy and Megan Florek, by their undersigned attorneys at the Wisconsin Institute for Law & Liberty, hereby allege as follows:

INTRODUCTION

1. The potential rezoning of the property on which Shattuck Middle School is located has generated considerable debate among residents in the City of Neenah, Wisconsin (the “City”), many of whom are opposed to any proposals or attempts to rezone the property in connection with a proposed development. Plaintiffs Timothy and Megan Florek (“the Floreks”) are among those residents who oppose the rezoning of the property. Like many residents holding this view, the Floreks have displayed a yard sign expressing this opinion on their private, residential property.

2. In response to Plaintiffs' yard sign, Defendant Bedora sent a "Notice of Violation" letter to the Plaintiffs, demanding that they remove their sign.

3. The ordinance upon which the City and Officer Bedora rely to justify the ordered-removal of Plaintiffs' sign violates the First Amendment to the United States Constitution. The ordinance is unconstitutional because it imposes the City's content-based judgements about which signs are allowed to be displayed, and regulates signage differently based upon the City's content-based value judgments.

4. This action seeks to enforce Plaintiffs' First Amendment right to freedom of expression through yard signs.

PARTIES

5. Plaintiffs Timothy and Megan Florek are citizens and residents of the United States and the State of Wisconsin. They reside at 645 Congress Street in the City of Neenah, Wisconsin.

6. Defendant Michaela Bedora is a Code Enforcement Officer at the Neenah Police Department. Defendant Bedora issued the "Notice of Violation," prompting this suit and is sued in both her individual and official capacities.

7. Defendant City of Neenah is a municipal corporation of the State of Wisconsin. It is the City's sign ordinance that is the subject of this action.

JURISDICTION AND VENUE

8. This case arises under the Constitution and laws of the United States, and subject matter jurisdiction is therefore proper under 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the requested declaratory relief pursuant to 28

U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57, to award damages and issue injunctive relief pursuant to 42 U.S.C. § 1983, and to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

9. Plaintiffs reside in the City of Neenah, Wisconsin, and all events or omissions giving rise to this cause of action occurred in the City of Neenah, Wisconsin, which is in the Eastern District of Wisconsin, Green Bay Division. Venue is therefore proper under 18 U.S.C. § 1391(b)(1) and (2).

STATEMENT OF FACTS

10. Plaintiffs Timothy and Megan Florek displayed a small sign in their front yard as imaged below, and reading, "Don't Rezone Shattuck Middle School Leave R1 Alone."



11. Numerous City residents are expressing their views by posting signs on their property similar to that being displayed by the Floreks.

12. By letter dated January 9, 2023, Defendant Michaela Bedora, on behalf of Defendant City of Neenah, sent the Floreks an initial "Notice of Violation," demanding that the Floreks remove the aforementioned yard sign from their property by February 8, 2023.

13. The initial “Notice of Violation” states that Plaintiffs 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).¹

14. The initial “Notice of Violation” further explains that that the Floreks’ sign is considered a “temporary sign” that transgresses the City’s “portable sign” restrictions if displayed for more than 30 days because there is “nothing pending with city council regarding re-zoning Shattuck Middle School.” However, the City also notes that “if there is a re-zoning request filed again with the city,” Plaintiffs’ sign would then be permitted to be displayed as a “political sign” because the issue would be “pending.”

15. In response to the City’s initial “Notice of Violation,” on January 19, 2023, the Floreks, by their attorneys, sent a response letter to the City.

16. The Floreks’ response letter informed the City that their sign ordinance, and its enforcement against the Floreks, violated their First Amendment rights, and requested the city withdraw the initial “Notice of Violation” within five days.

17. Rather than withdrawing the initial “Notice of Violation,” Defendants instead issued what they call an *amended* “Notice of Violation.”

18. This amended “Notice of Violation” is substantially the same as the initial Notice of Violation, except that it removed the City’s explanation that “if there is a re-zoning request filed again with the city,” Plaintiffs’ sign would then be

¹ https://library.municode.com/wi/neenah/codes/code_of_ordinances?nodeId=SPBLADERE_CH24SI_ARTVISINOREPE_S24-132SIRETILI (last accessed Jan. 24, 2023).

permitted to be displayed as a “political sign” because the issue would be “pending.” *Compare* the initial “Notice of Violation” (attached to the Declaration of Timothy Florek as Exhibit A) to the amended “Notice of Violation” (attached to the Declaration of Timothy Florek as Exhibit B).

19. The City offered no explanation or other context for issuing the amended notice.

20. Defendants have targeted the Floreks’ sign pursuant to a content-based review of the sign’s message and have demanded that the sign come down immediately based upon its message. By Defendants’ own admission, they would not even have sent the initial “Notice of Violation” if the sign contained a different message on a different issue.

21. The City has a comprehensive sign ordinance which generally prohibits signs from being displayed without a permit. *See* Chapter 24 of the Neenah Municipal Code. 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 differentiate between the types of signs that do and do not have time limits and also impose numerous other requirements, depending on the content of the sign.

22. 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.

23. In both the initial and amended “Notice of Violation” letters, the City classifies the Floreks’ sign as a “portable sign” under Section 24-132(8).

24. 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.

25. According to Section 24-132 of the sign ordinance, if the Floreks’ sign instead said “for sale by owner,” it would be classified as a “real estate sign” under Section 24-132(3). When a sign bears this “for sale” message, the ordinance allows the sign to be larger (up to 32 square feet), and in some cases, two signs may be displayed. In addition, the City permits the “for sale” sign to be displayed on the property for a seemingly indefinite period of time (*e.g.*, the ordinance requires the “for sale” sign to be removed within 30 days after the sale of the property, which may never happen).

26. But because the Floreks have chosen to display a sign which contains a political message instead of a sign which contains a “for sale” message, the City has resorted to an apparent default classification of the message as a “portable sign,” thereby limiting the Floreks to a single sign of smaller size and subjecting them to more stringent time limitations for displaying their sign.

27. While Section 24-132 of the sign ordinance contains time limits for the display of the listed content-based sign classifications, Section 24-133 similarly

categorizes other types of signs according to their content but does *not* impose any time limits on their display.

28. Under Section 24-133 of the sign ordinance, 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.

29. The Floreks could, according to Section 24-133(8) of the sign ordinance, indefinitely display a “no trespassing” or “no dumping” sign in their front yard, or advertise a home business; however, they are limited to 30-days’ time for their chosen political message.

30. Further, under Section 24-133(3) any “public officer in the performance of his public duty” may erect a sign which has *no limit* on when it needs to be taken down.

31. Under the City’s sign ordinance, the City must read and review the content of a given sign to determine how to regulate it, either more or less favorably based upon the categories in the ordinance.

32. The City’s sign ordinance is unconstitutional. Sections 24-132 and 24-133 of the sign ordinance plainly make value judgements about a sign’s subject or topic and assign differential treatment based on that content.

33. Furthermore, Defendants’ attempt to enforce this unconstitutional ordinance against Plaintiffs violates Plaintiffs’ First Amendment rights.

34. Failure to comply with the City’s sign 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, plus the costs of prosecution. *See* City of Neenah Municipal Code, Section 1-20(c).

35. 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).

36. Unless Defendants are enjoined from enforcing the City’s unlawful sign ordinance, Plaintiffs will not just be fined a substantial amount—they will remain irreparably harmed by the loss of their First Amendment speech rights.

CAUSES OF ACTION

CLAIM ONE: THE CITY’S SIGN ORDINANCE IS CONTENT-BASED IN VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

37. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

38. The First Amendment to the United States Constitution provides, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

39. The First Amendment’s free-speech guarantee applies to the States through the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652 (1925).

40. Under 42 U.S.C. § 1983, “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

41. At all times and with respect to all matters alleged herein, each of the Defendants was acting under color of state law.

42. 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). Any form of penalty for protected speech “[is] forbidden.” *Surita v. Hyde*, 665 F.3d 860, 871 (7th Cir. 2011).

43. The U.S. Supreme Court has recognized, “signs are a form of expression protected by the Free Speech Clause.” See *City of Ladue v. Gilleo* 512 U.S. 43, 48.

44. In this case, the Floreks are expressing their opinion about a potential action by the City, which they oppose. The rezoning of the property on which Shattuck Middle School sits has been a matter of substantial community interest, and many City residents are opposed to past, present and future attempts by private interests or City officials to rezone that property. Numerous City residents are expressing their views by posting signs on their property similar to that being displayed by the Floreks.

45. Some City officials may disagree with the Floreks and the others who oppose rezoning of the property; but 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 they may speak.

46. Plaintiffs have a First Amendment right to display the sign on their residential property as a means of expressing their opinions on a controversial issue.

47. Because signs are protected by the Free Speech Clause, a sign ordinance must be content neutral to be legally enforceable. *See Reed v. Town of Gilbert*, 576 U.S. 155 (2015). The sign ordinance that Defendants are attempting to enforce against the Floreks is not content neutral. Instead, the ordinance purports to require the Floreks to remove their sign based upon the content of their sign.

48. Restrictions on speech based upon the content of that speech are “presumptively unconstitutional” unless the government can show that the 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)).

49. Defendants have no compelling interest in prohibiting the Floreks’ political speech.

50. The City’s sign ordinance imposes content-based restrictions and is, accordingly, unconstitutional and invalid.

51. Defendants' enforcement of this ordinance against Plaintiffs has violated Plaintiffs' free speech rights under the First Amendment.

52. Unless this Court declares the sign ordinance unlawful and enjoins its enforcement, Defendants will impose significant penalties of up to \$1000 per day upon the Floreks and those similarly-situated for the exercise of their free speech rights under the First Amendment, and Plaintiffs will remain irreparably harmed by Defendants' constitutional violation.

**CLAIM TWO: IN ADDITION, THE CITY'S SIGN ORDINANCE IS AN
ARBITRARY AND UNREASONABLE RESTRICTION ON PROTECTED
SPEECH IN VIOLATION OF THE FIRST AMENDMENT TO THE UNITED
STATES CONSTITUTION**

53. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

54. The U.S. Supreme Court has recognized, "signs are a form of expression protected by the Free Speech Clause." See *City of Ladue*, 512 U.S. at 48.

55. The U.S. Supreme Court has made clear "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).

56. Laws that burden such political speech are subject to strict scrutiny. *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).

57. It is indisputable that the rezoning of Shattuck Middle School is a matter of public concern constituting political speech.

58. The City has determined, however, that the Floreks may not leave their so-called “portable sign” in their yard for more than 30 days within a 90-day period.

59. If, instead, the content of the Floreks’ sign read “No Trespassing,” or “For Sale” or regarding a home-based business, instead of commenting on a political matter within the City, the Floreks would be allowed to display the sign without threat of prosecution.

60. The City’s “Notice of Violation” also explains that the City’s sign ordinance would allow the Floreks to lawfully display their sign as a “political sign” “if there is a rezoning 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, regardless of whether the City Council is planning to vote on a rezoning effort or not. The City does not get to decide what issues its residents can speak on, nor does it have the authority to limit its residents’ political speech in this manner.

61. Whether the Floreks’ sign is regarded as a “portable sign” or a “political sign” (*i.e.*, a “political campaign sign”) under the sign ordinance, the ordinance imposes arbitrary and unreasonable restrictions on political speech for which there is no justification.

62. Through the “Notice of Violation,” Defendants have imposed these arbitrary and unreasonable restrictions upon the Floreks by demanding that they immediately remove their sign, which contains protected speech under the First Amendment.

63. The City of Neenah’s sign ordinance is additionally unconstitutional because it is a restriction on the right to engage in protected political speech.

CLAIM THREE: THE CITY’S ENFORCEMENT OF THE SIGN ORDINANCE UNLAWFULLY PUNISHES PROTECTED SPEECH IN VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

64. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

65. Through the “Notice of Violation,” Defendants have sought to punish the Floreks for their exercise of protected political speech, promising to impose fines of up to \$500 for the first offense and up to \$1000 for each subsequent offense, in addition to the costs of prosecution, if the sign is not removed.

66. Defendants’ actions to enforce the City of Neenah’s sign ordinance constitutes an unconstitutional retaliation upon the Floreks for their exercise of political speech protected by the First Amendment.

REQUEST FOR RELIEF

Plaintiffs therefore request the following relief:

A. A declaration that the Floreks’ yard sign is expression protected by the First Amendment;

B. A declaration that the City’s sign ordinance is content-based and/or otherwise restricts speech in violation of the First Amendment, and is therefore unconstitutional, and invalid;

C. A declaration that the City’s enforcement of its sign ordinance is unconstitutional retaliation for engaging in protected speech;

D. An injunction preventing Defendants from taking any further action on the “Notice of Violation”;

E. An injunction preventing Defendants from taking any further action to enforce the sign ordinance;

F. Nominal damages;

G. Costs and attorneys’ fees under 42 U.S.C. § 1988; and

H. Any such other relief as the Court deems appropriate.

Dated: January 30, 2023

Respectfully Submitted,

WISCONSIN INSTITUTE FOR
LAW & LIBERTY, INC.

s/ Lucas T. Vebber

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