



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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January 19, 2023

VIA ELECTRONIC MAIL ONLY TO: mbedora@ci.neenah.wi.us

Michaela Bedora
Code Enforcement Officer
Neenah Police Department
2111 Marathon Avenue
Neenah, WI 54956-4771

RE: *Notice of Violation, Case No. CE-20230026*

Dear Officer Bedora:

On behalf of the City of Neenah (herein “the City”), you sent the above-referenced “Notice of Violation” dated January 9, 2023 to Timothy Florek at 645 Congress Street in the City of Neenah, demanding that he immediately remove a particular yard sign from his property by February 8, 2023. We have been retained by Mr. Florek and his wife Megan (herein, “the Floreks”) to represent them in this matter and submit this letter in response to your “Notice of Violation.”

The sign in question says “Don’t Rezone Shattuck Middle School Leave R-1 Alone.” As you are aware, the rezoning of the R-1 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. As such, numerous City residents are expressing their views by posting signs on their property similar to that being displayed by the Floreks.

Some City officials may disagree with the Floreks and others who oppose rezoning of the property - we note, for example that City Council Member Dan Steiner was quoted in the newspaper as holding the opposing view.¹ But the City (through the Police Department and Code Enforcement) does not get to choose sides and determine who can speak on this issue and in what manner they may speak.

The Floreks have a First Amendment right to display the yard sign on their property. As the United States Supreme Court has made clear: “signs are a form of expression protected by the Free Speech Clause.” *City of Ladue v. Gilleo*, 512 U.S. 43, 48. The

¹ <https://www.postcrescent.com/story/news/local/2022/11/30/neenah-moves-forward-with-redevelopment-of-shattuck-middle-school/69682447007/>.

most recent U.S. Supreme Court decision on point is *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

Under *Reed*, a sign ordinance must be content neutral to be legally enforceable. But the City's ordinance is not content neutral and instead places restrictions on signage based upon the content of the signs. For example, under Section 24-132 (the section you rely upon), the City differentiates between construction signs, political campaign signs, real estate signs, promotional signs, yard sale signs, subdivision signs, etc. Each such type of sign – based on its content – is regulated in different ways. As cited in the City's Notice of Violation, "portable signs" on residential property containing a given message may be displayed for "30 days within a 90-day period" pursuant to Section 24-132(8). Accordingly, the City has made value judgments about various types of signage based upon its content and then imposed more or less restrictions base on those value judgments.

Section 24-133 further differentiates between different types of signs and again restricts them differently based upon their content. Under Section 24-133, the City does not impose the same time limits it imposes on signage regulated under Section 24-132. This differential treatment is again a reflection of the City's illegally imposed, content-based value judgments.

Restrictions on speech based upon the content of that speech "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, 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). Neenah has no compelling interests in its differential treatment.

We note further that the City, itself, can put up a variety of signs under Section 24-133 *without any time limits* but purports to regulate the "political campaign signs" of its citizens under Section 24-132 through the imposition of a time limit. In this regard, we also do not agree with your statement that the City's sign ordinance would allow the Floreks to lawfully display their sign "if there is a rezoning request filed again with the city" but not otherwise. Simply put, the issue does not implicate questions as to whether a rezoning measure is on an election ballot. Instead, central here is the pure political speech embodied by the Floreks' sign, which the City claims is subject to time restriction whether as a "portable sign" or as "political campaign sign." But contrary to these contentions, the City does not have the power to impose such restrictions under the First Amendment. Indeed, the City's sign ordinance is just the kind of ordinance that the Supreme Court has called "presumptively unconstitutional."

The City's actions in enforcing this unconstitutional ordinance against the Floreks violates their First Amendment rights, and they are prepared to take all steps necessary including legal action to ensure they are not deprived of those rights.

For the foregoing reasons, the Floreks will not be removing their sign. The Floreks hereby demand the City immediately withdraw the "Notice of Violation" and provide the Floreks with assurances that the ordinance will no longer be enforced against them for the display of their sign within the next five days, otherwise they will take additional legal action to enforce their rights.

Request for Public Records

The "Notice of Violation" states the City has received "a complaint regarding temporary signs" in the Floreks' neighborhood. We hereby request any records related to said complaint pursuant to Wisconsin Public Records Law, Wis. Stat. § 19.31 et. seq.

Further, it is our understanding that similar "Notice of Violation" letters were sent to other properties in the City. We hereby additionally request copies of any such "Notice of Violation" letters that have been sent out from January 1, 2023 to present.

All future communications on this matter should be directed to the attention of the below-signed attorneys.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY



Lucas T. Vebber
Deputy Counsel



Cara Tolliver
Associate Counsel

Attorneys for the Floreks

Copy:

Neenah Mayor Jane B. Lang, via e-mail to jlang@ci.neenah.wi.us
Neenah City Attorney David C. Rashid, via e-mail to drashid@ci.neenah.wi.us