Woodridge Ordinance

C. Political Campaign Signs: Political campaign signs not exceeding sixteen (16) square feet total sign surface area for any one premises. Political campaign signs shall not cover an already existing sign, shall not be a roof sign and shall be erected or placed no sooner than thirty (30) days prior to an election or referendum and be removed not later than five (5) days following such election or referendum.

BRENT CHRISTENSEN, Plaintiff, CITY OF WHEATON, VILLAGE OF BENSENVILLE, et al., Defendants.

No. 99 C 8426

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

2000 U.S. Dist. LEXIS 1737

February 14, 2000, Decided
February 16, 2000, Docketed

DISPOSITION: **[*1]** Plaintiff's application for an Order for preliminary injunction enjoining defendant from enforcing thirty-day restriction in Village of Bensenville's Ordinance 4-89 granted.

COUNSEL: For BRENT CHRISTENSEN, plaintiff: Brent M. Christensen, Law Offices of Brent M. Christensen, Oakbrook Terrace, IL.

For CITY OF WHEATON, defendant: James H. Knippen, II, Walsh, Knippen, Knight & Diamond, Wheaton, IL.

For VILLAGE OF BENSENVILLE, defendant: James Gus Sotos, Kevin G. Kulling, Dana M. Shannon, Hervas, Sotos & Condon, P.C., Itasca, IL.

For VILLAGE OF BENSENVILLE, defendant: Michael William Condon, Hervas, Sotos & Condon, P.C., Itasca, IL.

For VILLAGE OF BENSENVILLE, defendant: Peter Ostling, Attorney at Law, Bensenville, IL.

JUDGES: HON. RONALD A. GUZMAN, United States Judge.

OPINION BY: RONALD A. GUZMAN

OPINION:

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the application of plaintiff pro se, Brent Christensen, for an order of this Court preliminarily enjoining defendant from enforcing the Village of Bensenville Ordinance No. 4-89, pursuant to *Fed. R. Civ. P. 65*. For the reasons set forth below, the Court will grant plaintiff's application for preliminary injunctive **[*2]** relief.

BACKGROUND FACTS

On January 19, 1989, the Village of Bensenville Township Council adopted Ordinance No. 4-89, which provides in relevant part:

Sign, Permanent:	a sign that is not a temporary sign as defined herein
Sign, Political:	a temporary sign identifying a political candidate, party or issue.
Sign, Temporary:	a sign that is displayed for a period of less than 30 days.

Bensenville's sign ordinance creates a regulatory status of sign types wherein types of signs are assigned Exempt, Non-Exempt, or Prohibited status. Under this regulatory regime, political signs displayed for more than thirty days, are deemed permanent and are thus prohibited under the ordinance. Table 3, page 17.

Plaintiff is a candidate for the Democratic Party nomination for the office of Representative in U.S. Congress of the State of Illinois for the 6th Congressional

District to be voted for in the primary election on March 21, 2000. Plaintiff's campaign committee has purchased a number of signs measuring about 18" x 28" for placement by individual supporters at their private residences. On December 28, 1999, plaintiff commenced this action, contending that the **[*3]** thirty day durational limitation set forth in Ordinance 4-89 is an unconstitutional abridgement of the Free Speech Clause of the First Amendment. According to plaintiff under Bensenville's ordinance, political signs displayed for more than 30 days are deemed to be permanent and under the terms of the ordinance, are flatly prohibited.

DISCUSSION

This court must consider four traditional criteria in deciding whether to grant preliminary injunctive relief: (1) whether the plaintiffs have a reasonable likelihood of success on the merits; (2) whether the plaintiffs have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; (3) whether the injury to the plaintiffs from denying injunctive relief outweighs the harm to the defendants from granting the injunction; and 4) whether the public interest will be served by granting the injunction. *Plummer v. American Institute of Certified Public Accountants, 97 F.3d 220, 229 (7th Cir. 1996)*(citing *N.L.R.B. v. Electro-Voice, Inc., 83 F.3d 1559, 1567 (7th Cir. 1996),* cert. denied, *519 U.S. 1055, 117 S. Ct. 683, 136 L. Ed. 2d 608 (1997).* With these principles **[*4]** in mind, we begin our substantive review of the statute.

A. LIKELIHOOD OF SUCCESS

Plaintiff offers one primary reason why the ordinance is unconstitutional. Plaintiff contends that the ordinance is content-based because it favors commercial speech over political speech in that it imposes a time restriction that is specific to political signs. Although some signs pertaining to commercial events such as a yard sales or an institutional special event are also subject to this thirty day limitation period, a commercial event such as a real estate sale is not. Here, the period is extended indefinitely until completion of the sale. Specifically, the Bensenville ordinance defines real estate signs as a non-illuminated signs used to offer for sale, lease, or rent the property upon which or within which the sign is placed or to announce an open house or that the property has been sold. Under Bensenville's ordinance there is no durational restriction, whatsoever, on such real estate signs so long as they are removed after consummation of the sale or rental. On the other hand, exempt political signs are only permitted to be up for thirty days and must be removed the date of the election **[*5]** to which the sign pertains. Plaintiff argues that the interest asserted by the Village of Bensenville, the promotion of aesthetics and safety are not sufficiently compelling to justify an infringement specific to political speech.

Defendant disputes plaintiff's argument, and contend that plaintiff can not demonstrate a likelihood of success on the merits. Defendant argues that its ordinance is content-neutral and that the only restriction is that the sign must be removed thirty days after it is erected or on the day of the election. They further argue that nothing in the ordinance prohibits plaintiff from putting up another temporary sign at another location.

There is no question that the Village of Bensenville regulates speech by imposing various regulations upon posting signs. See generally the Village of Bensenville Ordinance 4-89 § 1. Of course, such restrictions are not impermissible, because even speech entitled to the highest First Amendment protection may be subject to reasonable time, place and manner regulations that are content-neutral, serve a significant government interest, and that leave open ample alternative channels for communication of the information. See also **[*6]** *City of Ladue v. Gilleo, 512 U.S. 43, 48, 114 S. Ct. 2038, 2041, 129 L. Ed. 2d 36 (1994)*(noting that regulations of signs is a permissible exercise of state's police powers). The first level of inquiry, therefore, is whether Ordinance 4-89 is content-based or content-neutral. If the ordinance discriminates on the basis of content, then the Court can not analyze the time limitation under a time, place and manner standard, but must instead proceed according to the more rigorous content-based test. *Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 513, 101 S. Ct. 2882, 2895, 69 L. Ed. 2d 800(1980).*

A municipal law is content-neutral if it regulates without reference to the content of the regulated speech... *Frumer v. Cheltenham TP. 709 F.2d 874, 876 (3d Cir.1983).* The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. *Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 2754, 105 L. Ed. 2d 661 (1989)*(citing *Clark v. Community for Creative Non-Violence, 468 U.S. 288, 295, 104 S. Ct. 3065, 3070, 82 L. Ed. 2d 221 (1984)).* **[*7]** Thus, if the governmental regulation is justified without reference to the content of the regulated speech, that regulation will be deemed content neutral, even if it incidentally impacts some forms of speech. Id. See also *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771, 96 S. Ct. 1817, 1830, 48 L. Ed. 2d 346; Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 513, 101 S. Ct. 2882, 2895, 69 L. Ed. 2d 800 (1980)* (providing two analytically distinct bases upon which to determine whether a statute is content-neutral: (i) whether the provisions protect commercial speech more

than noncommercial speech; and (ii) whether the provisions distinguish...between permissible and impermissible signs...by reference to their content).

In this case, the time restriction in Ordinance No. 4-89 clearly is not content neutral, because it specifically limits signs advertising political events or view points to a thirty day period and political signs are defined by the ordinance to be temporary to begin with. The distinction in the ordinance of making all political signs temporary and thus only displayable for thirty days is content-based **[*8]** ab initio. Durational restrictions on political campaign signs is content-based because determining whether a sign may stay up or must come down requires consideration of the message it carries. *Ackerley Communications v. City of Cambridge, 88 F.3d 33, 36 n.7 (1st Cir. 1996).* By contrast, signs advertising real estate sales are presumably temporary signs and could be for any length of time so long as they are removed after consummation of the sale or rental. Likewise, construction signs do not have to be removed until 30 days after the certificate of occupancy is issued. Obviously, this distinction is based only on content--only on what the particular sign communicates. Where, as here, the provisions at issue so clearly restricts one form of speech to a heightened degree, the Court need not confront the difficult issues presented in *Metromedia* of whether exceptions contained in the statute effectively render it an unconstitutional preference of some forms of speech over others or, in the alternative, whether the statute is unconstitutionally underinclusive. By limiting political signs to thirty days Ordinance 4-89 pinpoints one form of speech as the subject of **[*9]** a limitation more burdensome than that imposed on another form of speech. In so doing, the provisions obviously favor commercial speech, which conceivably could remain on a posted sign for much lengthier periods, over a form of noncommercial speech. See also *Whitton v. City of Gladstone, Mo., 832 F. Supp. 1329 (W.D. Mo. 1993)*(holding unconstitutional ordinance that restricted posting political signs to thirty days or less before event as content-based preference of commercial over noncommercial speech). The fact the defendants group yard sales and institutional events into this category does not render the provision of the ordinance content neutral. Having concluded that Ordinance 4-89 is content-based, the Court must apply a more exacting constitutional standard than if the ordinance were content-neutral. See *Ward, 491 U.S. at 791, 109 S. Ct. at 2753; Boos v. Barry, 485 U.S. 312, 321, 108 S. Ct. 1157, 1163-64, 99 L. Ed. 2d 333 (1988); Members of City Council v. Taxpayers for Virginia, 466 U.S. 789, 804-05, 104 S. Ct. 2118, 2128-29, 80 L. Ed. 2d 772 (1984).* The Court has instructed:

> Our cases indicate that **[*10]** as a content-based restriction on political speech in a public forum, [the statute in question] must be subjected to the most exacting scrutiny. Thus, we have required the State to show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.

Boos, 485 U.S. at 321, 108 S. Ct. at 1164 (quoting *Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45, 103 S. Ct. 948, 955, 74 L. Ed. 2d 794 (1983)).*

Courts have attached significant weight to a government's interest in minimizing the clutter and distractions occasioned by signs posted in public areas such as curbside, highway medians and sidewalks. Indeed the Court's recent decisions in *Gilleo* recognized that

> while signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers. Unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulations. It is common ground that governments may regulate the physical characteristics **[*11]** of signs...

Gilleo, 512 U.S. 43, 48, 114 S. Ct. at 2041.

Defendants raise absolutely no arguments as to how their Ordinance 4-89 has been tailored to serve these objectives. Nor is it readily apparent why a thirty day restriction will promote the objectives. As such, this Court can not conclude that the ordinance is narrowly tailored to the Village's interest in safety and aesthetics. Moreover, defendant already has in effect provisions that adequately serve its interests in safety and aesthetics. For example, section B 2(b) of the ordinance provides that unsafe signs shall be removed within thirty days. Likewise Section B 2(d) provides that temporary signs will be removed on the day of the event or within 10 days. These regulations would seem to allow the Village to apply its police powers to protect its aesthetic and safety interests, and to do so in a manner that is content-neutral. Defendant claims that this ordinance is like the ordinance in *City of Waterloo v. Markham, 234 Ill. App. 3d 744, 600 N.E.2d 1320, 175 Ill. Dec. 862 (5th Dist. 1992)* which was held to be enforceable. We disagree. First, the time limitation in Waterloo was 90 days not **[*12]** 30 days.

Second, that ordinance was content-neutral. Thus, it is inapposite. In light of the Court's conclusion that Ordinance No. 4-89 is content-based and defendants have failed to put forth any argument as to why the durational limitation is appropriately tailored to promote the state interest, we find that plaintiff has a strong likelihood of success on the merits.

B. IRREPARABLE INJURY

The Court must next determine whether denial of the application for preliminary injunctive relief would cause plaintiff irreparable injury. *Plummer v. American Institute of Certified Public Accountants, 97 F.3d 220, 229 (7th Cir. 1996).* The plaintiff bears the burden of establishing a clear showing of immediate irreparable injury. *Id.* Even a temporary deprivation of first amendment freedom of expression rights is generally sufficient to prove irreparable harm. See *Citizens for a Better Env't v. City of Park Ridge, 567 F.2d 689, 691* (7th Cir. 1975; *Schnell v. City of Chicago, 407 F.2d 1084, 1086 (7th Cir. 1969).* The Court's conclusion that plaintiff has a strong likelihood of establishing that the thirty-day restriction in Ordinance **[*13]** 4-89 is a content-based abridgment of political speech which is not narrowly tailored to advance a compelling government interest satisfies the standard articulated above. There is no sum of money that can adequately repay a candidate for public office for the lost opportunity to promote his candidacy during an election campaign where time is of the essence. Defendant is enforcing an ordinance that constitutes an unconstitutional suppression of political speech. Accordingly, this Court concludes that plaintiff has satisfied this aspect of the preliminary injunction.

C. BALANCING THE EQUITIES & PUBLIC INTEREST

The Court next must balance the equities of plaintiff's and defendant's positions to determine whether granting the injunction would cause defendant more harm than the harm plaintiff is likely to suffer if the injunction is not granted. In this case, the equities weigh heavily in plaintiff's favor. Although defendant has a legitimate interest in promoting its citizens' interests in aesthetics and safety, it is unclear exactly how it expects the thirty day time restriction in Ordinance 4-89 to vindicate those concerns. Hence, we cannot gauge what, if any, harm will **[*14]** accrue to defendant or its citizens form the grant of an injunction, and certainly no harm sufficient to warrant an unconstitutional restriction of plaintiff's First Amendment rights has been articulated. It is readily apparent that this reasoning applies equally to the Court's consideration of the public interest. Accordingly, the Court also concludes that plaintiff has satisfied the final prong of the analysis, and therefore has carried his burden of proving that the issuance of preliminary injunctive relief is warranted in this matter.

CONCLUSION

For the foregoing reasons, this Court will grant plaintiff's application for an Order for preliminary injunction enjoining defendant from enforcing the thirty-day restriction in the Village of Bensenville's Ordinance 4-89. The Court will waive the usual requirement that a plaintiff seeking preliminary injunctive relief post cash or a bond as security. The reasons set forth supra suggest that defendant is unlikely to suffer any loss, because plaintiff is most likely to succeed on the merits; the equities weigh exclusively in plaintiff's favor; and at any rate, any loss that might occur would not likely be monetary.

SO [*15] ORDERED

ENTERED: 2/14/00

HON. RONALD A. GUZMAN

United States Judge