

Baltimore County, will be prevented from displaying political campaign signs on their property more than 45 days in advance of all elections, including the upcoming Baltimore City mayoral election in September 2007. By their Motion and this memorandum in support thereof, Plaintiffs seek to vindicate their constitutional right to engage in free speech by challenging the legality of the County's political campaign sign regulations. Specifically, Plaintiffs seek injunctive relief enjoining Baltimore County from enforcing the unconstitutional provisions of the Amended Regulation.

Applying the factors relevant to granting an injunction, there is a strong likelihood that Plaintiffs will succeed on the merits of their Motion; courts have repeatedly struck down ordinances with durational limits on political signs. In fact, in 1998, Judge Francis D. Murnaghan of the United States Court of Appeals for the Fourth Circuit found unconstitutional a similar regulation enacted by Baltimore County. *Taylor v. Baltimore County, Maryland*, No. 98-2090, slip op. (4th Cir. July 28, 1998). There, the Court granted an individual's request for an injunction pending appeal against Baltimore County for a regulation that limited the posting of political campaign signs to 30 days before an election.¹ As Judge Murnaghan explained, such a regulation is "content based" and cannot not survive strict scrutiny because, "even if the goals of preserving community aesthetics and ensuring traffic safety [a]re compelling interests . . . , the regulation is not narrowly tailored to meet them." *Taylor*, slip op. at 6.

As with the regulation at issue in *Taylor*, the Amended Regulation is content-based and is not narrowly tailored to meet Baltimore County's stated goals for it (aesthetics and traffic safety). Moreover, the Amended Regulation fails to leave open ample alternative means of communicating the desired message and, unless the Court grants an injunction, will cause

¹ A copy of the Fourth Circuit's Opinion in *Taylor v. Baltimore County, Maryland* is found in the Appendix hereto.

irreparable injury to Plaintiffs. Courts have repeatedly found that restricting free speech, even for minimal periods of time, constitutes irreparable injury. By contrast, Baltimore County will not suffer irreparable injury if it is not permitted to enforce the Amended Regulation. Finally, enforcement of the Amended Regulation is clearly against the public's interest. Without the free exchange of information in political campaign signs, voters, the government, Baltimore County, and the public will suffer.

Accordingly, the Court should grant Plaintiffs' request for preliminary injunctive relief.

BACKGROUND

Plaintiffs incorporate herein by reference the facts alleged in their Verified Complaint, filed simultaneously with this memorandum. Plaintiffs further note as follows:

Baltimore County Zoning Regulation 450.7.F provides that "political campaign" signs, which are defined as "temporary sign[s] displaying information about an electoral issue or a candidate for public office," "must be removed within seven days after the closing of polls following any primary by any unsuccessful primary candidate and within seven days after the closing of the polls following any general election by all other candidates." Baltimore Cnty. Zoning Regulations, §§ 450.7.F; 450.4.14 (Ex. A to Verified Complaint).

A recent amendment to that regulation, scheduled to become effective on February 3, 2007, further restricts the display of the majority of political campaign signs to 45 days prior to any primary election. Specifically, the Amended Regulation provides that "[p]olitical campaign signs, if required by state law to contain an authority line on behalf of a candidate or political issue, may be erected on private property no earlier than 45 days prior to any primary election." Amended Regulation, § 450.7.F (Ex. B to Verified Complaint). Pursuant to Md. Code, Election Law, § 13-401, the vast majority of political campaign signs are required to contain an "authority line." Specifically, an authority line must appear on any "campaign material," whether published

or distributed by a campaign finance entity or any other person. Md. Code, Election Law, § 13-401(a). As defined in Md. Code, Election Law, § 1-101(k)(1), “campaign material” means “any material containing text, graphics, or other images relating to a candidate, a prospective candidate or the approval or rejection of a question that is published or distributed.”

Plaintiffs are residents of Baltimore County and wish to exercise their free speech rights to display political campaign signs on their property. Pursuant to Baltimore County Zoning Regulation 450.7.F, however, and upon the February 3, 2007 effective date of amendment thereto, Plaintiffs are precluded from displaying the majority of political campaign signs on their property for between seven to ten months a year. Such provisions are tantamount to a ban on political speech and constitute a violation of the First and Fourteenth Amendments to the Constitution of the United States.

ANALYSIS

Under Federal Rule of Civil Procedure 65, this Court must weigh four factors in deciding whether to grant a motion for preliminary injunction: (1) the likelihood that the plaintiff will succeed on the merits; (2) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied; (3) the likelihood of harm to the defendant if the requested relief is granted; and (4) the public interest. *United States Dep’t of Labor v. United Mine Workers of Am.*, 452 F.3d 275, 280 (4th Cir. 2006). In this First Amendment case, in which irreparable harm is presumed, *see Elrod v. Burns*, 427 U.S. 347, 373 (1976), and the rights sought to be vindicated receive special protection under the law, the balance of these factors weighs sharply in favor of granting the requested preliminary injunction.

A. Plaintiffs Have a Strong Likelihood of Success on the Merits.

The sight of political signs in the front yards of American homes is a familiar reminder of an important freedom guaranteed to the American people by the First Amendment. Advocating

for the passage of a referendum or the election of a particular candidate by displaying a residential yard sign “is a venerable means of communication that is both unique and important.” *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994). Because Baltimore County's durational limit on campaign yard signs violates an established precedent of this Court (*Curry v. Prince George's County*, 33 F. Supp. 2d 447 (D. Md. 1999)) and Fourth Circuit precedent concerning a predecessor to the Amended Regulation (*Taylor v. Baltimore County, Maryland*, No. 98-2090, slip op. (4th Cir. July 28, 1998)), it is highly likely that Plaintiffs will succeed on the merits.

1. Baltimore County Zoning Regulation 450.7.F Restricts the Speech of Property Owners Who Wish to Display Political Campaign Signs.

Although Baltimore County attempts to justify the Amended Regulation by limiting to signs that bear an authority line and characterizing it as a regulation on campaigns, that proposition has been squarely rejected by the Fourth Circuit and this Court. In *Curry*, this Court held that a “law affecting a property owner's right to erect a [political] yard sign affects both the owner's and the candidate's First Amendment rights.” *Curry*, 33 F. Supp. 2d at 449, n.3 (citing *Craig v. Boren*, 429 U.S. 190, 194-197 (1976)). Likewise, in *Arlington County Republican Comm. v. Arlington County*, 983 F.2d 587 (4th Cir. 1993), the Fourth Circuit held that a regulation that limited homeowners to placing only two political signs on their property “infringe[d] on the rights of two groups: the candidates and the homeowners.” *Id.* at 595.

As the Supreme Court aptly explained in *City of Ladue*, “[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign somewhere else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the ‘speaker.’” *City of Ladue*, 512 U.S. at 56. Thus, regardless of its authority line limitation, the Amended Regulation improperly restricts the speech of Baltimore County residents, including Plaintiffs.

2. The Amended Regulation is Content-Based, is Not Narrowly Tailored, and Fails to Leave Open Ample Alternative Means of Communication.

Speech regulations such as the durational limit on political campaign signs enacted by Baltimore County are carefully analyzed by the courts. In order for a regulation to survive scrutiny as a valid time, place or manner restriction, it must (a) be content-neutral, (b) be narrowly tailored to further a substantial government interest, and (c) leave open ample alternative means of communicating the desired message. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 428 (1993). Here, the Amended Regulation fails to meet any of the standards. The durational limit imposed by the Amended Regulation restricts speech based on the message conveyed, is not narrowly or otherwise tailored to further Baltimore County's stated interests, and fails to leave open adequate alternative means of communicating Plaintiffs' desired message. As such, the Amended Regulation is an unlawful restraint on free speech.

a. The Amended Regulation is a content-based restriction on free speech.

In general, "content-neutral speech restrictions [are] those that are justified without reference to the content of the regulated speech." *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1998) (quotation omitted). In practice, content neutrality must extend not only to the particular position or viewpoint of the speaker, but also to the speaker's choice of topic. *Boos v. Barry*, 485 U.S. 312, 319 (1988). Thus, the "First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S. 530, 537 (1980).

Here, for seven to ten months out of the year (depending on whether the sign relates to a successful or unsuccessful primary candidate), the Amended Regulation curtails the display of

political campaign signs on residents' private property. Other signs in Baltimore County, however, are not subject to such restrictions. For instance, outdoor commercial advertising signs and personal messages, which expressly do not include "political campaign signs," are not subject to any durational restrictions under Baltimore County Zoning Regulations. Baltimore Cnty. Zoning Reg. §§ 450.4.13; 450.7.C.

This dichotomy makes clear that the Amended Regulation is a content-based restriction on one common type of political campaign speech. *See City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993) (holding that whether a particular newsrack fell within a city's ban on commercial handbills in newsracks was "determined by the content of the publication resting inside that newsrack and, therefore, "by any commonsense understanding of the term, the ban . . . is 'content based'"). In fact, Baltimore County must determine the content of the sign (e.g., political campaign, outdoor commercial advertising, or personal message) to ascertain whether its Amended Regulation applies.

b. The Amended Regulation is not narrowly tailored to further a substantial government interest.

As a content-based restriction on noncommercial speech, Baltimore County's restriction on political campaign signs is subject to strict scrutiny. *Boos v. Barry*, 485 U.S. 312, 321-322 (1988). Like any other content-based restriction on speech, that restriction is "presumptively impermissible, and this presumption is a very strong one." *City of Ladue*, 512 U.S. at 59 (O'Connor, J., concurring). Baltimore County thus carries the burden of proving that its "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 (quoting *Perry Education Assn. v. Perry Local Educators Assn.*, 460 U.S. 37, 45 (1983)). This it cannot do.

Here, Baltimore County's stated interests in regulating signs are to promote and further traffic safety and aesthetics. Baltimore Cnty Zoning Regs. Art. IV, §§ 450.1.C; 450.1.D; 450.1.G(1); 450.1.G(2); 450.1.G(3); *Taylor*, slip op. at 6. Although both are recognized as “substantial governmental goals,” they are “not compelling enough to justify content-based restrictions on fully protected noncommercial speech.” *King Enterprises, Inc. v. Thomas Township*, 215 F. Supp. 2d 891, 911 (E.D. Mich. 2002) (citing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-508, 514-515 (1981)). *See also Curry*, 33 F. Supp. 2d at 452 (noting that the interests of aesthetics and traffic safety have “failed to pass strict scrutiny” in the past). Accordingly, Baltimore County has no compelling interest to justify the content-based speech restriction imposed by the Amended Regulation.

Moreover, even if Baltimore County's stated interests of traffic safety and aesthetics were sufficiently compelling to justify a content-based restriction on speech (which they are not), the durational limit of the Amended Regulation is not narrowly tailored to further those interests. As was the case in *Dimas v. Warren*, 939 F. Supp. 554 (E.D. Mich. 1996), Baltimore County has not shown that its interest in aesthetics and traffic safety “justifies placing time limits on the posting of political signs, but not on temporary signs that convey commercial messages or ideological messages unrelated to an upcoming election.” *Id.* at 557. In fact, in connection with Baltimore County’s earlier attempt to restrict free speech, Judge Murnaghan on the Fourth Circuit has already held that:

[t]here are less restrictive means, and content-neutral means, to serve these interests. For example, the County could regulate the design and condition of all signs. Or the County could prevent the posting of signs within a reasonable distance of the street. Or it could require that each sign be up for no more than 30 days, but allow a homeowner to post a new sign to replace the old one.

Taylor, slip op. at 6. See also *Arlington County Republican Comm.*, 983 F.2d at 594 (holding that Prince George’s County could have promoted its interests in traffic safety and aesthetics through less restrictive means than a two-sign limit regulation). As such, Baltimore County’s interest in traffic safety and aesthetics is not “so well served” by the Amended Regulation, which singles out political campaign signs for regulation, that “the resultant infringement upon constitutional rights can be justified.” *Dimas*, 939 F. Supp. at 557.

c. The Amended Regulation fails to leave open ample alternative means for communicating the desired message.

Finally, whether analyzed as a content-based or content-neutral restriction on speech, binding precedent makes clear that the durational limit enacted by Baltimore County fails constitutional scrutiny because it does not allow ample alternative means for a resident to communicate his or her desired message. In *City of Ladue*, the Supreme Court analyzed Ladue’s ban on yard signs under the less demanding standard applied to content-neutral speech restrictions. *City of Ladue*, 512 U.S. at 53 (“In examining the propriety of Ladue’s near total prohibition of residential signs, we will assume, *arguendo*, the validity of the City’s submission that the various exemptions are free of impermissible content or viewpoint discrimination.”). Nevertheless, even assuming a content-neutral restriction, it held that the speech conveyed by residential yard signs was so unique and important that curtailing it failed to leave open ample alternative means for communicating the desired message. *Id.* at 54, 58. As the Supreme Court explained,

Ladue has almost completely foreclosed a venerable means of communication that is both unique and important. It has totally foreclosed that medium to political, religious, or personal messages. Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident’s support for particular candidates, parties, or causes. They may not

afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.

...

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker." As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade.

...

Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a hand-held sign may make the difference between participating and not participating in some public debate.

...

A special respect for individual liberty in the home has long been part of our culture and our law, that principle has special resonance when the government seeks to constrain a person's ability to *speak* there. Most Americans would be understandably dismayed, given that tradition, to learn that it was illegal to display from their window an 8- by 11-inch sign expressing their political views.

Id. at 56-58 (citations omitted).

Similarly, this Court, in *Curry*, granted plaintiff's motion for summary judgment challenging a regulation similar to the Amended Regulation at issue here.² The Court relied on the above passages from *City of Ladue* concerning the unique nature of residential signs and held that durational limits on campaign signs were indistinguishable from the signs at issue in *City of Ladue*. *Curry*, 33 F. Supp. 2d at 453-54. Thus, this Court stated explicitly that while valid regulations "may include size, shape and location restrictions of campaign signs, they **may not** include durational ones." *Id.* at 454-55 (emphasis added). Accordingly, even if content-neutral, the Amended Regulation, which creates a year-round ban on political campaign signs with the exception of 45 days prior and 7 days following an election, cannot pass constitutional muster.

² The regulation at issue in *Curry* prohibited posting campaign signs more than 45 days before an election and required removal of such signs within 10 days after an election.

B. Plaintiffs Will Be Irreparably Harmed Unless The Injunction Is Granted.

As the Supreme Court has stated, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also Swartzwelder v. McNeilly*, 297 F.3d 228, 241-42 (3d Cir. 2002) (quoting *Elrod*). Absent an injunction here, Plaintiffs will lose their First Amendment rights to engage in political speech on their own property through the display of political campaign signs until the next 45-day window in Baltimore County’s ban. Until (and after) that time, Plaintiffs will be unable to affix signs to their property in support of, or opposition to, a political candidate or issue, for fear that such signs will be in violation of the Amended Regulation and that they will be required to remove the signs. Plaintiffs’ ability to exercise their core First Amendment freedoms of political expression, and to participate in public political debate, will be severely curtailed.

C. Defendant Will Suffer No Irreparable Harm If The Injunction Is Granted.

This case does not implicate Baltimore County’s authority to regulate signs that pose an imminent danger to society. Thus, granting Plaintiffs’ requested injunction will not cause any foreseeable irreparable harm to Baltimore County. Accordingly, the balance of harms favors enjoining Baltimore County’s restraint of Plaintiffs’ constitutional rights.

D. Granting the Injunction Will Serve the Public Interest.

Free political exchange is a public interest that is at the core of our society. Both candidates and voters suffer when the government bans a central and traditionally protected method of expressing political views and affiliations. Such a ban not only harms those who would post political signs, but also deprives any citizen of an easily accessible source of information about the views of neighbors and the community at large. No real substitute exists

for the role that political signs play in American politics and enjoining a ban on their use can only serve the public interest.

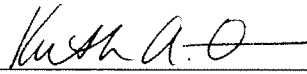
CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' motion for preliminary injunctive relief and such other relief as may be just and proper.

[SIGNATURE ON FOLLOWING PAGE]

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Respectfully submitted,



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