UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 3:18-cv-30182

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

The City of Holyoke recently enacted an ordinance that, in violation of the First Amendment and the Massachusetts Constitution, prohibits residents from displaying "temporary" lawn signs between December 1 and March 1 of each year. The city has also banned "temporary signs" on vehicles—a term that is defined to include commonplace bumper stickers. Persons who violate Holyoke's new sign ordinance are subject to Draconian fines of up to $300, per sign, per day.

The Plaintiffs are persons who wish to display lawn signs at their Holyoke residences and bumper stickers on their cars. Their complaint seeks declaratory and injunctive relief against

enforcement of Holyoke's lawn sign and bumper sticker bans under the First and Fourteenth Amendments to the U.S. Constitution, Art. 16 of the Declaration of Rights, as amended, and Amendment Art. 46 of the Massachusetts Constitution. By this motion, Plaintiffs request a temporary restraining order and preliminary injunction against enforcement of these provisions pending the outcome of this lawsuit.

Plaintiffs have a strong likelihood of success on the merits of their claims under the First Amendment. The Sign Ordinance almost completely forecloses two common and readily-accessible methods of communication, and thus suppresses "too much speech" to pass constitutional muster. *City of Ladue v. Gilleo*, 512 U.S. 43, 54, 55 (1994). The ordinance exempts from the ban all governmental flags and insignia and thus amounts to content-based regulation of speech, but is neither supported by a compelling governmental interest nor narrowly tailored to advance such an interest, as required. The ordinance also suffers from unconstitutional ambiguities that vest the Building Commissioner with excessive discretion in enforcement in this sensitive, constitutionally-protected area.

Unless the Court enjoins enforcement of the Sign Ordinance pending the outcome of this case, Plaintiffs will suffer irreparable harm, because "[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 (1976); *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965) (irreparable harm from "a chilling effect on free expression.") The City of Holyoke, on the other hand, will not be prejudiced by an injunction in the slightest.

In the event that the Court cannot hold a hearing and rule on plaintiffs' request for a preliminary injunction before December 1, 2018, the date on which "temporary signs" on property are banned per the Holyoke ordinance, Plaintiffs respectfully request that the Court

issue a temporary restraining order against the enforcement of the ban, effective December 1, 2018.

In support of their motion, Plaintiffs submit the affidavits of Kaitlin Molloy, Sarah Oelker, Anne Thalheimer, Dani Ryan, Gabriel Quaglia, Lisa Ahlstrom, and Dale Melcher, and Jeffrey J. Pyle, and further state as follows.

FACTS

On October 16, 2018, the Holyoke City Council amended the City's ordinance regulating signs on residential and commercial properties, over the veto of Mayor Alex Morse. ("Sign Ordinance"). The Sign Ordinance is set forth in Section 6.4 the Holyoke Zoning Code, located at Appendix A to the Revised Code of Ordinances. The Sign Ordinance as it existed prior to the recent amendments is set forth in Exhibit A to the Complaint. The 2018 amendments to Section 6.4 and a summary of the votes leading to their passage, including the override of the Mayors' veto, are contained in Exhibit B to the Complaint. The Mayor's Veto message is contained in Exhibit C.

Section 6.4.3(7) of the revised Sign Ordinance regulates so-called "Temporary Signs." (Ex. B). It defines the term "temporary signs" as follows: "Temporary signs shall include fixed signs, portable signs, banners, inflatables, balloon signs, sandwich boards, and other similar signs." The Sign Ordinance contains no further definition of "Temporary Signs," nor does it define "permanent" signs.

The Sign Ordinance, as revised, provides:

> No temporary signs shall be allowed in any district between the dates of December 1st and March 1st of each year in any location within the City. Signs to be placed in any location between these dates, for a duration longer than two (2) weeks, shall be registered with the Building Department prior to placement. Registrants shall provide a location of placement (address), duration of placement, and the materials of which the sign is made.

Ex. B., Section 6.4.3(7).

On its face, the first sentence, above, appears to categorically ban "temporary signs"—including "fixed signs," banners" and "sandwich boards"—on residential and commercial properties in the months of December, January and February, period. The registration language, which appears directly after the absolute ban set forth in the first sentence of Section 6.4.3(7) (fourth bullet point), appears to apply only to "signs" that are not "temporary signs."

The revised Sign Ordinance exempts from the definition of a "sign," and therefore does not regulate, any "[f]lags and insignia of any government except when displayed in connection with commercial promotion." (Ex. B, Section 6.4.2).

The Sign Ordinance further provides that "[t]emporary signs shall not be placed on or affixed to vehicles. Permanent signs affixed to vehicles are exempt from this section." (Ex. B, Section 6.4.3(7)(b)). The Sign Ordinance does not define "temporary sign" or "permanent sign" in the context of a motor vehicle. However, the provision, on its face, prohibits persons from driving or parking cars with bumper stickers in Holyoke.

Although the plaintiffs interpret the Sign Ordinance as set forth above, the language of the ordinance contains significant ambiguities that both chill speech and give significant and unconstitutional discretion to the Building Commissioner in his enforcement of the Sign Ordinance. For example:

- By failing clearly to define "temporary signs" and "permanent signs," the Sign Ordinance provides little if any guidance as to kinds of signs that are and are not prohibited during the months of December, January, and February, as opposed to being subject to registration. This lack of clarity gives the Building Commissioner excessive discretion as to which signs, and which messages, to target for enforcement.

- It contains a sentence imposing an absolute ban on "temporary" signs during December, January and February, but also requires registration of "signs" that

are "placed" during those months for a period of more than two weeks, without making clear whether registered "temporary" signs are exempt from the ban.

- It does not state whether signs that are not "temporary signs" may be placed in the months at issue for less than a two-week period with or without registration.

- It does not make clear whether "Wayfinding signs," 6.4.3(9), "Bed and breakfast signs" and "Signs advertising the sale of any vehicle, 6.4.5(7) and (8), which are regulated by separate subsections than the challenged 6.4.3(7), are subject to the 6.4.3(7) restrictions.

Regardless of how the Sign Ordinance is construed, it either entirely prohibits or substantially interferes with the right of Plaintiffs and other members of the public to display lawn signs during the months of December, January and February, as well as bumper stickers all year long.

Persons who post "temporary signs" in their yards or display them on their vehicles in violation of the ordinance are subject to increasing levels of fines for each sign and each day that a sign remains in place. Pursuant to Section 6.4.10 of the Sign Ordinance, the first day of a violation results in a warning; the second day results in a fine of $25 per sign and a maximum of $100 for all signs; the third day results in a fine of $100 per sign and a maximum of $500 for all signs; and the fourth and each subsequent day results in a fine of $300 per sign with no cap on the maximum penalty. (Ex. B, § 6.4.10).

City Councilor David K. Bartley proposed the 2018 amendments to the Sign Ordinance, including the December-February ban on lawn signs. In introducing the amendment, Bartley stated that his "purpose" in proposing the ban on lawn signs was "to emphasize that [political] campaigns . . . are only finite by nature and any political signs should only be temporary themselves and not be permanently posted in lawns or on buildings." (Ex. B).

Elections, however, can occur in Massachusetts at any time of year. For example, on January 19, 2010, the Commonwealth held a special election to fill the seat of Senator Edward M. Kennedy. Had the revised Sign Ordinance been in effect at that time, no person in Holyoke could have displayed a lawn sign supporting or opposing a candidate in that important Senate election, at least not without registering it with the Building Department first. (Complaint, ¶ 27).

The City Council in Holyoke also votes on important issues all year long, as do the state legislature and Congress. Enforcement of the Sign Ordinance would therefore restrict residents of Holyoke from using lawn signs to influence policy being debated and enacted by their elected representatives.

Important social and political issues also can arise at any time of year. For example, on December 3, 2014, a grand jury declined to indict New York City police officer Daniel Pantaleo for the choking death of Eric Garner. On December 12, 2014, more than 100 people marched in downtown Holyoke to protest police killings of unarmed black men.[1] The Sign Ordinance, if it had been in place at the time, would have prohibited Holyoke residents from putting up lawn signs reading "Black Lives Matter" or "I Can't Breathe" in solidarity with the marchers for the period between the grand jury's decision and the march. (Complaint, ¶ 29).

There is also an expressive purpose in displaying signs for political candidates after the campaign to which they pertain is over. Such displays can protest the outcome of an election. And, if the Sign Ordinance had been in place in January 2017, it, for example, would have restricted a supporter of the newly-elected president from displaying a sign reading "Make America Great Again" on Inauguration Day.

[1] *See* Michelle Williams, "Over 100 March in "Black and Brown Lives Matter" Protest in Downtown Holyoke, *masslive.com*, December 12, 2014.

Plaintiffs have maintained and wish to continue to have lawn signs at their residences in Holyoke or bumper stickers on their cars. Plaintiffs' signs include messages supporting political candidates, as well as social and political messages such as "Black Lives Matter" and "All are Welcome." Plaintiffs wish to continue to display their signs, and put up new ones, during the months of December through February. Certain of the Plaintiffs also drive cars with bumper stickers in Holyoke that bear a variety of messages, and they wish to continue to do so.

ARGUMENT

The Court should enjoin the enforcement of Holyoke's ban on "temporary signs," including lawn signs and bumper stickers, pending the resolution of this action. As explained below, Plaintiffs have a strong likelihood of success on the merits of their claims; they will suffer irreparable loss of constitutionally protected freedoms if injunctive relief is not granted; and the balance of harms and the public interest favor Plaintiffs' request. *See* Fed. R. Civ. P. 65; *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 22 (2008); *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). The City of Holyoke, by contrast, will suffer no cognizable prejudice from continuing to permit lawn signs and bumper stickers to be displayed in Holyoke over the winter, while the issues presented in this lawsuit are resolved.

I. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR FIRST AMENDMENT CLAIMS.

The Supreme Court has held that lawn signs are "a venerable means of communication" and are fully protected by the First Amendment.[2] *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994)

[2] Article 16 of the Declaration of Rights, as amended by Article 56 of the Articles of Amendment, protects freedom of speech at least as rigorously as the First Amendment. Indeed, in several situations, the Supreme Judicial Court has determined that Article 16 is more protective of free speech than the First Amendment. *See, e.g., Mendoza v. Licensing Bd. of Fall River*, 444 Mass. 188, 196 (2005) (explaining

(striking down ordinance that prohibited yard signs on private property, while allowing the display of flags with governmental insignia); *see also Reed v. Town of Gilbert, Arizona,* 576 U.S. __, 135 S.Ct. 2218 (2015) (striking down sign ordinance that prohibited display of outdoor signs without a permit, but exempting certain categories of signs). Similarly, the bumper sticker is "an unusually cheap and convenient form of communication" subject to First Amendment protection. *City of Ladue*, 512 U.S. at 57; *Baker v. Glover,* 776 F. Supp. 1511, 1515 (M.D. Ala. 1991) ("for those citizens without wealth or power, a bumper sticker may be one of the few means available to convey a message to a public audience").

The City of Holyoke's ban on these common means of communication violates the First Amendment for several independent reasons. Among other constitutional infirmities, it (1) "suppress[es] too much speech"; (2) discriminates on the basis of content; and (3) vests too much discretion in the hands of the Building Commissioner in choosing which signs are and are not subject to enforcement.

A. Holyoke's Sign Ordinance Suppresses "Too Much Speech."

In *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the Supreme Court struck down a municipal ordinance that almost completely prohibited yard signs on private property. In doing so, the Court noted that its "prior decisions have voiced particular concern with laws that foreclose an entire medium of expression," such as prohibitions on handbills and door-to-door distribution of literature. *Id.* at 55. Even where ordinances of this nature do not discriminate based on the content of the speech, the Court held, "the danger they pose to the freedom of

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that Article 16 provides greater protection to certain forms of protected speech, such as nude dancing, than the First Amendment); *Commonwealth v. Sees*, 372 Mass. 532 (1978)(finding a violation of Article 16 where First Amendment not violated). Because the ordinance at issue here clearly violates the First Amendment, it also violates Article 16.

speech" nonetheless "is readily apparent—by eliminating a common means of speaking, such measures can suppress too much speech." *Id.*

The Court went on to explain that the act of posting signs in one's own yard is "a venerable means of communication that is both unique and important." *Id.* at 55. "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." *Id.* at 56 (noting that "[a] sign advocating 'Peace in the Gulf' in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-year-old child's bedroom or the same message on a bumper sticker of a passing automobile.") Moreover, "[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." *Id.* (emphasis in original, internal citations omitted). *Id.* at 55. Accordingly, the Court held, "Ladue's ban on almost all residential signs violates the First Amendment." *Id.* at 58.

The Court's decision in *City of Ladue* controls here. The Sign Ordinance "has totally foreclosed th[e] medium[s]" of "temporary" lawn signs for three months out of the year—and bumper stickers all year long, "to political, religious, or personal messages." *Id.* at 54. As in *City of Ladue*, there are not "adequate substitutes . . . for the important medium[s] of speech that [Holyoke] has closed off." *Id.* at 56. Accordingly, the Sign Ordinance "suppress[es] too much speech," and violates the First Amendment. *Id.* at 55.

The City cannot defend the Sign Ordinance by pointing to its provision that persons may display "signs" for "longer than two (2) weeks" in December, January or February by first registering them with the Building Department. Ex. B, § 6.4.3(7). First, the Sign Ordinance is by no means clear that "temporary" signs are allowed *at all* in December, January or February,

regardless of registration—indeed, the ordinance appears to ban them outright. (Ex. B, § 6.4.3(7) ("No temporary signs shall be allowed in any district between the dates of December 1st and March 1st of each year in any location within the City.") However, even if "temporary signs" were allowed under the Sign Ordinance for longer than two weeks *with* prior registration, the Sign Ordinance effectively denies persons the right to display a sign for only a few days. For example, a person who decides on December 22 to put up a banner on her home reading "Merry Christmas" is forced under the Sign Ordinance first to "register" the sign with the City, and is then to keep the banner up until January 6, whether she wants to do so or not. *W. Virginia State Bd. of Educ. v. Barnette,* 319 U.S. 624, 646 (1943) (Murphy, J., concurring) (discussing the freedom under the First Amendment "to be vocal or silent according to his conscience or personal inclination.")

In any event, the registration clause cannot save the Sign Ordinance for another, more fundamental reason: registration requirements themselves violate the First Amendment.

In *Watchtower Bible and Tract Society of New York v. Village of Stratton,* 536 U.S. 150 (2002), the Supreme Court invalidated an ordinance that required those engaged in door-to-door canvassing to first register with municipal authorities. The Court held that a requirement of informing the government of one's desire to speak violated the First Amendment because of its "breadth and unprecedented nature," emphasizing the effects on anonymous, spontaneous, and religious and political speech, and its failure to be tailored to the City's stated interests.

> The mere fact that the ordinance covers so much speech raises constitutional concerns. It is offensive-not only to the values protected by the First Amendment, but to the very notion of a free society-that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant,

> a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.

Id. at 165-66 (emphasis added).

The *Watchtower* court struck down the pre-registration requirement as applied to persons seeking to speak on *other people's* property. *See also Service Employees Intern. Union, Local 3 v. Municipality of Mt. Lebanon*, 446 F.3d 419 (3d Cir. 2006) (invalidating an ordinance requiring registration before going door-to-door). *A fortiori*, requiring registration as a precondition to engaging in political or religious or spontaneous speech on one's *own* property cannot be constitutional. *See Marin v. Town of Southeast*, 136 F. Supp. 3d 548, 566 (S.D.N.Y. 2015) (describing laws that regulate the private speech of private citizens on private property as presumptively unconstitutional after *City of Ladue*).

In *Lusk v. Village of Cold Spring*, 475 F.3d 480, 485-87 (2d Cir. 2007), the court applied *Watchtower* to invalidate an ordinance that required "prior administrative approval of speech" because it "falls within the prior restraint rubric" and "acts to 'freeze' the speech of the plaintiff and others like him . . . who wish to use signs to convey message, 'at least for the time' it takes them" to comply). Here too, a resident who wants to put up a yard sign in response to a developing political or social issue would either be barred from doing so during certain months or have her speech frozen until registration with a public office can be accomplished. In the words of the Court in *Watchtower*, this "constitutes a dramatic departure from our national heritage and constitutional tradition," 536 U.S. at 165-166, and cannot stand.[3]

[3] The Sign Ordinance also confers on the Building Department complete discretion to determine what additional information, beyond that listed in the Sign Ordinance, is required for registration. *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 132-133 (1992). The Building Department could require a prospective registrant to provide not only an address, but also her name, thus foregoing interests in anonymity and spontaneity that are protected by the First Amendment, *see, e.g., Watchtower Bible and Tract Society of New York v. Village of Stratton*, 536 U.S. at 166. The Building Commissioner could also require a registrant to provide a detailed description of what a proposed sign will say, or why the

B. The Sign Ordinance is Content-Based, Is Not Supported by a Compelling Governmental Interest and is Not Narrowly Tailored.

In *Reed v. Town of Gilbert, Arizona,* 576 U.S. __, 135 S.Ct. 2218 (2015), the Supreme Court struck down a municipal ordinance that banned lawn signs but exempted various categories of signs based on content, such as "temporary directional signs," "political signs," and "ideological signs." *Id.* at 2227. The Court held that the town's sign ordinance included "content-based regulations of speech," and therefore was subject to "strict scrutiny." *Id.* at 2224.

Under the test of "strict scrutiny," laws that "target speech based on its communicative content" are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* at 2226. In *Reed,* the town's two justifications for the ban, "preserving the Town's aesthetic appeal and traffic safety," were insufficient under this test because they were "hopelessly underinclusive"—that is, signs subjected to less regulation were just as much of an eyesore or traffic hazard as the kinds of signs the town restricted heavily. *Id.* at 2231-2232.

Here, the Sign Ordinance allows flags and temporary signs displaying flags or other governmental insignia, but bans all other temporary signs from being displayed in private yards between December 1 and March 1 of each year.[4] The Sign Ordinance also apparently allows bumper stickers on cars that display flags, while outlawing all other bumper stickers all year

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registrant wants to display the sign. The potential for such demands for information to chill constitutionally protected speech is obvious.

[4] As noted above at p. 5, the ordinance may also allow temporary bed and breakfast signs and signs offering vehicles for sale to be displayed year round and without registration, but the ordinance is ambiguous in that regard. If the ordinance favors commercial speech (or professional signs) over political speech, that distinction would constitute another obvious constitutional violation. The constitutional prohibition of such content- based discrimination was clear in the First Circuit pre-*Reed* and even pre-*City of Ladue. Matthews v. Town of Needham,* 764 F. 2d 58. 61(1st Cir. 1985).

long. Accordingly, the Sign Ordinance is a content-based regulation that must, but cannot, survive strict scrutiny.

In *Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625 (4th Cir. 2016), decided after *Reed*, the Fourth Circuit Court of Appeals struck down an ordinance that required individuals to apply for a "sign certificate" verifying compliance with a sign code. The sign code applied to "any sign within the city which is visible from any street, sidewalk or public or private common open space" but exempted any "flag or emblem of any nation, organization of nations, state, city, or any religious organization," or any "works of art which in no way identify or specifically relate to a product or service." *Id*. at 629.

Applying *Reed*, the Fourth Circuit held that the ordinance was based on "the topic discussed or the idea or message expressed," and did not survive strict scrutiny. *Id*. at 633. The Court held the city's interests in physical appearance and reducing distractions, obstructions, and hazards to pedestrians were not "compelling" within the meaning of First Amendment law, and even if there had been a compelling interest behind the provision, the ordinance, by exempting flags and other displays, was not narrowly tailored to achieve that interest. *Id.* at 634.

The same analysis applies here, and supplies another reason why the Holyoke ordinance is unconstitutional.[5] The stated interest in the lawn sign ban—reinforcing the fact that elections

[5] The Holyoke ordinance is also unlawfully content-based because it discriminates against types of speakers. Under section 6.4.3 (7), introductory paragraph and 6.4.5.6, a temporary sign in a residential neighborhood can apparently never exceed six square feet, while under the introductory paragraph of 6.4.3 (7), signs "greater than 6 square feet" can be allowed, with a permit, "in business and industrial districts." So, someone in a business district may obtain a permit to display a very large political sign supporting a political candidate, but someone in a residential neighborhood cannot. As explained by the Court in *Reed*, 135 S.Ct. at 2230-2231, content discrimination can be present based on distinctions among different kinds of speakers. And the Court in *www.RicardoPacheco.com v. City of Baldwin Park*, No. 2:16-cv-09167-CAS(GJSx), 2017 WL 2962772 (C.D. Cal. July 10, 2017) (unpublished), found that an ordinance that favored commercial over non-commercial speakers was content-based and did not survive strict scrutiny. The provision is also arbitrary and capricious, because persons who own residential properties that happen to be located in business and industrial districts may display political, religious, or social messages on large signs, whereas owners of similar properties in areas zoned "residential" may not.

are "finite by nature" and that political signs should not remain up after an election is over—is not even close to a "compelling governmental interest" within the meaning of the First Amendment. *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 799 (2011) (striking down state regulation of sale of violent video games to minors, observing, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible.").[6] Nor is the Sign Ordinance, which bans all temporary signs in the winter (except flags and governmental insignia and perhaps registered signs intended to be up for more than two weeks and a few others) "narrowly tailored" to the asserted government interest. Indeed, allowing signs to be registered *if* they are going to be up for a longer period *but not* if they are going to be up for a shorter period is inconsistent with the City's purported interest in limiting the length of time temporary signs can be posted.

C. The Sign Ordinance is Hopelessly Vague, and Confers Unbridled Discretion on the Building Commissioner.

The Sign Ordinance suffers from yet another constitutional infirmity: it is hopelessly vague, and gives significant (and unlawful) discretion to the Building Commissioner to determine what signs are and are not subject to the ordinance's substantial monetary penalties. For example, the ordinance (1) fails clearly to distinguish "temporary signs," which are banned

[6] To the extent Holyoke seeks to justify the seasonal lawn sign ban on grounds of traffic safety and aesthetics, the ban would fail for the same reasons as in *Reed*: it is "hopelessly underinclusive" because the same concerns would apply between March 1 and November 30 as during the winter months. The City cannot explain how an unlimited number of lawn signs in the Spring, Summer and Fall do not threaten traffic safety or imperil aesthetics, yet they do in December, January and February, when the signs may be buried under snow much of the time. To the extent the seasonal lawn sign ban only applies to *unregistered* lawn signs that are in place for less than two weeks, there is a complete disconnect between means and ends: presumably, if its stated interests are its real interests, Holyoke should want to encourage temporary signs to be up for less than two weeks, not encourage longer-term signs. Nor can the bumper sticker ban be justified on those grounds in any event, given that "permanent" signs (including presumably signs painted or stenciled on a vehicle), as well as garishly painted vehicles, are allowed, but may well be more distracting or unappealing than a small bumper sticker expressing a political, social or religious view.

December through February, from other "signs," (e.g, "permanent signs") which are not; (2) contains a registration requirement for "signs" that are to be "placed" for longer than two weeks during the winter months, without making clear precisely what kinds of signs must be registered, and (3) requires a person who registers a sign in December, January or February to inform the Building Department of the "duration" of the sign, but does not state what the consequences are if the registrant does not remove the sign by the end of the period for which it is registered.

Under the First Amendment, the government cannot regulate speech in such a way that "every application creates an impermissible risk of suppression of ideas," such as by delegating "overly broad discretion to the decisionmaker." *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 129 (1992). The due process clause of the Fourteenth Amendment prohibits "overly vague laws," in order "to ensure that persons of ordinary intelligence have fair warning of what a law prohibits, prevent arbitrary and discriminatory enforcement of laws by requiring that they provide explicit standards for those who apply them, and, in cases where the statute abuts upon sensitive areas of basic First Amendment freedoms, avoid chilling the exercise of First Amendment rights." *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 62 (1st Cir. 2011) (internal quotations omitted). Where, as here, First Amendment rights are involved, "the Constitution requires a greater degree of specificity" than in other contexts. *Id.*

Here, the abject lack of clarity in the Sign Ordinance, coupled with the potential for financially crippling fines of up to $300 per sign per day, runs a high risk of "chilling the exercise of First Amendment rights." *Id.; see also Holder v. Humanitarian Law Project,* 561 U.S. 1, 18 (2010), quoting *United States v. Williams,* 553 U.S. 285, 304 (2008) (A law, particularly a law that implicates free speech rights, is "unconstitutionally vague because it invites seriously discriminatory enforcement"); *Papachristou v. City of Jacksonville,* 405 U.S.

156 (1972)(vagrancy ordinance invited discriminatory law enforcement); *NAACP v. Button*, 371 U.S. 415, 338 (1963) (law unconstitutional where it relies on case by case enforcement to say who is and is not in violation). The vagueness of the Sign Ordinance reinforces Plaintiffs' clear showing of likelihood of success on the merits.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION, WHEREAS AN INJUNCTION WILL NOT PREJUDICE HOLYOKE AND WILL SERVE THE PUBLIC INTEREST.

"[I]rreparable injury is presumed upon a determination that the movants are likely to prevail on [a] First Amendment claim." *Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 11 (1st Cir. 2012). That conclusion flows from the well-established rule that "[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 (1976). Such irreparable harm is particularly established where a plaintiff can show "a chilling effect on free expression." *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965).

If the lawn sign ban in the Sign Ordinance is not enjoined, as of December 1, Plaintiffs will have to either pull up or not place their "temporary signs"—and thereby stop that venerable form of expressive activity—or suffer substantial financial penalties. In the alternative, Plaintiffs will have to stop their expressive activity until such time as they may be able to register their intent to speak with the Building Department. Plaintiffs also will technically be required to peel their bumper stickers off their cars if they want to drive or park in Holyoke without financial penalty. Plaintiffs clearly will suffer irreparable First Amendment injury absent an injunction and elimination of that injury is in the public interest.

On the other hand, as explained above, the City cannot even articulate a valid reason for the ban on lawn signs and bumper stickers, let alone show that its interests are strong enough to

overcome the Plaintiffs' constitutional rights. Holyoke's lawn sign and bumper sticker ban "do[] not pass strict scrutiny, or intermediate scrutiny, or even the laugh test." *Reed v. Town of Gilbert*, 135 S.Ct. at 2239 (Kagan, J., concurring). These restrictions are plainly unconstitutional, and should be enjoined.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court issue a temporary restraining order and preliminary injunction enjoining Defendants, pending resolution of this action on the merits, from enforcing Section 6.4.3(7) of the Holyoke Zoning Code to the extent it (1) prohibits "temporary signs" on residential or commercial properties between December 1 and March 1 or requires their registration during that period, and (2) forbids "temporary signs" on vehicles, including bumper stickers.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF ANNE THALHEIMER IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Anne Thalheimer, and I am a plaintiff in this lawsuit.

2. My home address is 8 Clark Street, Holyoke, Massachusetts 01040.

3. I have lived at this address since May 19, 2007.

4. The house where I live has two apartments, and I am the tenant on the second and third floor.

5. The owner of the property lives next door.

6. Since the time I moved into this home, I have consistently had lawn signs in the yard. My landlady helpfully mows around the signs during grass cutting season.

7. My house is just off of Northampton Street, Route 5, so the signs can be seen from there. Northampton Street is the main road connecting Northampton and Holyoke.

8. I have been very involved in local politics for a long time, and during the past election season, I had signs that said Yes on Ballot Question 1 and Yes on Ballot Question 3.

9. In addition, for over a year I have had on my lawn a "Welcome Neighbors" sign. It has been on my property on my front lawn all year long.

10. I have run as a candidate for City Council in Ward 3, and when I officially become a candidate again at the beginning of January, 2019, I plan to put out a lawn sign in support of my candidacy.

11. To me, this is a free speech issue. It is wrong for the government to be the arbiter over whether someone can express themselves and when that person such as myself can express herself. There is a level of governmental interference here that seems wrong.

12. I wish to place a lawn sign without delay and without having to register with the city and delay my expression until I have done so. In addition, I don't want there to be an official record of my signs. Not only is it a misguided use of municipal resources to have this requirement, it is an unnecessary and burdensome infringement on my right to free speech.

13. I identify as a low-income person and as queer. I think that all persons, and particularly persons of marginalized communities, need the right to free speech.

14. I plan that between December 1, 2018 and March 1, 2019, for the "Welcome Neighbors" sign to remain in my yard, and should it during that time period need to be replaced on account of wear and tear or it should disappear without my permission, then I would replace it.

15. In addition, I have bumper stickers on my car. One says "Beto For Senate;" the second says "I stand With Planned Parenthood." There is a third bumper sticker. It says "Roller Derby Iceland." It has a drawing of a goat with a roller derby helmet.

16. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 13th day of November, 2018.

Anne Thalheimer

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF SARAH OELKER IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Sarah Oelker, and I am a plaintiff in this lawsuit.

2. My home address is 75 Evergreen Drive, Holyoke, Massachusetts 01040.

3. I have owned and lived in this home at this address since 2009.

4. I have two lawn signs on my property at this time. One sign is the "All People Are Welcome" sign and the other sign is a "Black Lives Matter" sign. The "All People Are Welcome" sign has been on my lawn since March, 2017. The "Black Lives Matter" sign has been there approximately as long. That sign was stolen once, and I replaced it.

5. I plan to have both these signs on my lawn between December 1, 2018 and March 1, 2019. Should either of them be stolen again, I would replace them. I believe I should be able to place and maintain signs on my lawn regardless of the time of year. The signs on my lawn are visible to pedestrians and drivers on Evergreen Drive both during daylight hours and at night due to the nearby street light.

6. In addition, I have bumper stickers on my car, one of which is overtly political. It says "Anne Thalheimer For City Council-At-Large." It is on my car as an expression of ongoing support for her as a progressive candidate.

7. I am contesting this ordinance because I believe it is important to make statements about my beliefs and to make these statements consistently and on an ongoing basis. The signs I have on my lawn are to express my concern for my neighbors who may be experiencing oppression on the basis of their language, religion, or immigration status.

8. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 13th day of November, 2018.

Sarah Oelker

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF DANIELLE RYAN IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Danielle Ryan, and I am a plaintiff in this lawsuit.

2. My home address is 5 Glen Street, Holyoke, Massachusetts 01040.

3. I have been a home owner in Holyoke since February, 2017.

4. I live at home with my wife, Sarah Peacock, and we have lived together in our home at this address since February, 2017.

5. Since moving in, we have consistently had signs on our lawn. One has been a Friendly Neighbor – You Are Welcome Here – sign, and the other is a Black Lives Matter sign.

6. During the past election, I additionally had signs supporting Ballot Question #1 and another supporting Ballot Question #3.

7. I want to put up signs year round. I already know that between December 1, 2018 and March 1, 2019 I want to display on my property the You Are Welcome Here and Black Lives Matter signs that I mention above.

8. I also wish to be able to post my signs without having first to delay posting them by going to a city official to register my political and other expression. I also am opposed to the city keeping track of the political sentiments and positions of its residents.

9. I also believe that signs are really important because people in our community and marginalized groups should see our support. As a queer person, I always appreciate seeing signs that support us and make us feel welcome and safer.

10. Between our two family cars we have on them several rainbow stickers, a Black Lives Matter bumper sticker, Pride stickers, a Mount Holyoke and a Hamilton College bumper sticker, and a Star Trek bumper sticker as well.

11. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 9th day of November, 2018.

D. Ryan

Danielle Ryan

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF GABRIEL QUAGLIA IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Gabriel Quaglia, and I am a plaintiff in this lawsuit.

2. I have been the home owner at 13 Harrison Avenue, Holyoke, Massachusetts 01040 for 14 years.

3. I live at this address with my wife and my son.

4. I frequently have political signs, electoral and otherwise, on my lawn. I have had a "Black Lives Matter" and "Everyone Is Welcome" sign on my lawn for the past year and a half.

5. I just placed on my lawn as well an "Anne Thalheimer for City Council" sign as a protest against David Bartley, the councilor who is the major proponent of the ordinance at issue in this lawsuit.

6. I spoke to Councilor Bartley on the day when this ordinance was passed. He explained to me that there were two reasons for the ordinance. The first reason, Councilor Bartley explained to me, was public safety, more specifically, that a driver could become distracted by a sign and crash his car. The second reason he told me that he objected to lawn signs was aesthetics. Councilor

Bartley did not amplify what he meant about his objection based on aesthetics other than to indicate that he didn't think signs were aesthetically pleasing.

7. I am a plaintiff in this lawsuit because I don't think there should be a prohibition on straightforward political speech, what I can say on my own lawn. I do believe that this ordinance is targeted at a couple people, and I don't think the government should do that. I have sometimes put a candidate's signs up long after an election was decided as a protest.

8. I want to put up signs year round. Accordingly I already know that between December 1, 2018 and March 1, 2019, I will put up and replace the "Black Lives Matter" and "All Are Welcome" signs that are on my lawn as may be necessary on account of wear and tear or theft. In addition, I am planning to put up as of December 1, 2018 political signs from past elections for the purpose of asserting my constitutional right to freedom of speech and to protest the infringement of that precious and fundamental right by the ordinance at issue in this case enacted by the local government.

9. In addition, I have bumper stickers on my car that say "Yeti,", and "M.U." These bumper stickers honor my late brother Mark Urban, who passed a little over five years ago. Yeti was his nickname and is the name of the triathlon team of which I am a member that we named in his honor. "M.U." are his initials. I think that I should have the right to have these signs on my car without interference by or burdens imposed by the government.

10. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 13 day of November, 2018.

Gabriel Quaglia

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF KAITLIN MOLLOY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Kaitlin Molloy, and I am a plaintiff in this lawsuit.

2. My home address is 28 Lawler Street, Holyoke, Massachusetts 01040.

3. This address has been my home since May, 2017.

4. Since moving into this house, on a regular basis I have had political signs for candidates on my front lawn.

5. I wish to be able put up signs and maintain signs on my lawn that are political in nature, regardless of what month of the year it happens to be. I already know that between December 1, 2018 and March 1, 2019, if and when Anne Thalheimer announces her intention to run for City Council (which I expect to happen in January), I will post one of her campaign signs on my lawn.

6. I believe I should be able to place signs on my lawn without having to inform the City of Holyoke about my intentions or the content of my signs, and to do so in a timely manner and without delay.

7. In addition, I have bumper stickers on my car that advertise Drexel Law School and Gettysburg College, and my car also has a temporary Mount Holyoke College parking sticker.

8. I believe that the Sign Ordinance in question in this lawsuit unduly and improperly limits my free speech. I think the Ordinance is burdensome, and I believe it is wrong.

9. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 13th day of November, 2018.

Kaitlin Molloy

Kaitlin Molloy

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF DALE MELCHER IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Dale Melcher, and I am a plaintiff in this lawsuit.

2. I have lived in Northampton since 1974. I travel, and plan to continue to travel, to and from Holyoke to go shopping – for example at the Holyoke Mall; as well as for dining; and for entertainment and celebrations – for example, at Gateway City Arts on Race Street in Holyoke, and the Holyoke Heritage Museum and the beautiful carousel on the grounds of the museum.

3. I have three bumper stickers on my car at this time. One is a "Bernie Sanders for President 2016." Another is "No On Question 2. Bad For Our Schools." The third bumper sticker (magnetic attachment and so easily removable) says "We The People/Dare To Create A More/Perfect Union." It is an ACLU bumper sticker. Sometimes this bumper sticker is on my husband's car, which I also sometimes drive in Holyoke. That car has bumper stickers that change from time to time. At present his additional bumper stickers are: "No Corporate Coffee/Brew Dean's Beans/Fair Organic Trade." There is an additional ACLU bumper sticker that says "Torture: Where Is The Outrage?"

4. I believe I have a constitutional right to drive to and from Holyoke without fear of being cited for violation of a city ordinance. I don't understand how the city can, consistent with my

constitutional rights, order me to take the bumper stickers off my car before crossing the city line, which is, as I understand the ordinance, what it in effect says I have to do in order to be in compliance.

5. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 13th day of November, 2018.

Dale Melcher

Dale Melcher

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF LISA AHLSTROM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. My name is Lisa Ahlstrom, and I am a plaintiff in this lawsuit.

2. My husband and I own our home at 215 Madison West, Holyoke, Massachusetts 01040; we have owned and lived in this home since 2003.

3. Our house is at the corner of Northampton Street, which is Route 5, a main thoroughfare, and Madison West.

4. We have a large yard along Madison West, and the signs in our yards are visible from the street both to automobiles and pedestrian traffic.

5. We often and regularly have political signs that we put in our yard. We do this regardless of the season.

6. At this time, we have an "All are Welcome" sign which has been in our yard since the fall, 2017. We intend, and want, to keep this sign up throughout the year and want to be able to replace it if it were damaged by wear and tear or otherwise needed to be replaced.

7. I am part of this lawsuit because I believe our freedom of speech is being infringed upon by the City of Holyoke. I also believe that requiring a public official to keep track of residents' political expression not only is wrong but is a terrible misuse of municipal resources.

8. I want to put up signs year round. I already know that between December 1, 2018 and through the holiday season I want to display on my lawn a sign reflective of the season that says "Peace On Earth." I consider the displaying of this sign as an exercise of my religious freedom.

9. In addition, on our family vehicles there are bumper stickers: "Morse for Mayor;" "Smith College;" "P.V.P.A." (for Pioneer Valley Performing Arts Public Charter School); "Ultimate" (a celebration of ultimate frisbee, which my daughters play); and "Zion," a national park logo.

10. I further hereby affirm that the additional facts stated in the Complaint as they pertain to me are true and accurate.

Signed under the pains and penalties of perjury this 13 day of November, 2018.

11.13.18

Lisa Ahlstrom

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 3:18-cv-30182

KAITLIN MOLLOY, SARAH OELKER, ANNE THALHEIMER, DANIELLE RYAN, GABRIEL QUAGLIA, LISA AHLSTROM, and DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS; ALEX MORSE, in his official capacity as Mayor of Holyoke; and DAMIAN COTE, in his official capacity as Holyoke Building Commissioner,

Defendants.

AFFIDAVIT OF JEFFREY J. PYLE IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Jeffrey J. Pyle, hereby depose and state as follows.

1. I am counsel to the Plaintiffs in the above-captioned matter. I make this affidavit on personal knowledge in support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction.

2. Attached as Exhibit A to the Complaint is a true and correct copy of the Holyoke Sign Ordinance as it existed before amendments in October 2018, as posted at the following website: https://library.municode.com/ma/holyoke/codes/code_of_ordinances?nodeId= PTIICOOR_APXAZO_S6GERE_6-4SI.

3. Attached as Exhibit B to the Complaint is a true and correct copy of the 2018 amendments to Section 6.4, along with the City's summary of the votes leading to their passage, including the override of the Mayor's veto, as posted on the website of the City Clerk of the City of Holyoke: https://www.holyoke.org/departments/city-clerk/#extra8-tab.

4. Attached as Exhibit C to the Complaint is a true and correct copy of the Holyoke Mayor's veto message regarding the Sign Ordinance, as reproduced in full at https://www.masslive.com/news/index.ssf/2018/10/holyoke_mayor_vetoes_city_council_lawn_sign_restrictions_citing_freedom_of_speech.html.

Signed this 16th day of November under the pains and penalties of perjury,

/s/ *Jeffrey J. Pyle*
Jeffrey J. Pyle