

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.

MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION
(Oral Argument Requested)

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 for at least three independent reasons. 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 also 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 further 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 private 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 accompanying memorandum of law, and the affidavits of Kaitlin Molloy, Sarah Oelker, Anne Thalheimer, Dani Ryan, Gabriel Quaglia, Lisa Ahlstrom, Dale Melcher, and Jeffrey J. Pyle.

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,

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

By their attorneys,

/s/ Jeffrey J. Pyle _____

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