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Attorneys for: Plaintiffs

GEORGE PANAGIOTOU; JOAN	:	SUPERIOR COURT OF NEW JERSEY
MASTROFILIPO; BERNARD	:	LAW DIVISION
GUARINO; and JOAO MENDES,	:	BERGEN COUNTY
	:	DOCKET NO.
Plaintiffs,	:	
	:	
v.	:	Civil Action
	:	
BOROUGH OF LODI, NEW JERSEY;	:	COMPLAINT; JURY DEMAND; AND <u>R.</u>
SCOTT LUNA; NICHOLAS MELFI,	:	4:5-1 CERTIFICATION
JR.; MARC SCHRIEKS; and JOHN	:	
DOES I-V, Individually,	:	
	:	
Defendants.	:	
	:	

Plaintiffs, George Panagiotou, Joan Mastrofilipo, Bernard Guarino, and Joao Mendes, by way of Complaint against the Defendants, Borough of Lodi, New Jersey, Scott Luna, Nicholas Melfi, Jr., Mark Schrieks, and John Does I-V, say:

INTRODUCTION

1. The Plaintiffs are residents of Lodi, New Jersey, who were issued Summonses for placing signs on their property supporting candidates for election to the local school board.

2. It turns out that the Lodi Sign Ordinance under which the Plaintiffs were charged is unconstitutional pursuant to U.S. Supreme Court precedent. The Ordinance impermissibly regulates signs within the Borough according to the content of the sign's message, in violation of the right to free speech.

3. Borough officials, by ticketing the Plaintiffs under an unconstitutional Ordinance and threatening them with mandatory \$1,000 per-day fines if the signs were not taken down, interfered with the Plaintiffs' exercise of free speech.

4. Accordingly, this action is brought to void the Borough's Sign Ordinance and enjoin the Defendants from further enforcing it, and for an award of damages to Plaintiffs for the deprivation of their civil rights to date, along with other appropriate relief.

FACTS COMMON TO ALL COUNTS

I. Parties

5. Plaintiffs, George Panagiotou, Joan Mastrofilipo, Bernard Guarino, and Joao Mendes are all residents of the Borough of Lodi, who received Summonses for violation of the Borough Sign Ordinance that this action seeks to invalidate.

6. Defendant Borough of Lodi (the "Borough") is a municipal corporation of the State of New Jersey, with an address of 1 Memorial Drive, Lodi, New Jersey 07644.

7. Defendant Scott Luna is the Mayor of Lodi, and a Borough official who directed or participated in the violation of the Plaintiffs' civil rights and other wrongful acts as described below, who is sued herein in his individual capacity.

8. Defendant Nicholas Melfi, Jr. is the Lodi Zoning Officer, and a Borough official who directed or participated in the violation of the Plaintiffs' civil rights and other wrongful acts as described below, who is sued herein in his individual capacity.

9. Defendant Marc Schrieke is the Municipal Manager of Lodi, and a Borough official who directed or participated in the violation of the Plaintiffs' civil rights and other

wrongful acts as described below, who is sued herein in his individual capacity.

10. Defendants John Does I-V are the as-yet unidentified Borough officials or persons who also directed or participated in the violation of the Plaintiffs' civil rights and other wrongful acts as described below.

II. Facts

A. The Lodi School Board Election

11. On April 16, 2024, an election took place in the Borough, for the three open seats on the Lodi Board of Education (the "BOE").

12. There were two opposing slates of candidates organized under competing campaigns. The "New Voices" campaign advocated for the election of Mikaela Alcala, Joseph Lafranca, and Alcenovel Bautista to the BOE. The "Citizens Against Corruption" ("CAC") campaign advocated for the election of Paula Cortez, Carmine Telep, and Plaintiff George Panagiotou.

13. In the weeks leading up to the election, many Borough residents exercised their free speech rights by posting signs on their property advocating for their preferred slate of candidates.

B. The Sign Ordinance

14. Section 585-16 of the Borough Ordinances, organized under the Zoning Chapter, addresses the posting of signs within the Borough. Subsection (J) lists the restrictions on the placement of "election or political signs" on private property.

15. For example, Subsection (J)(2) of the Sign Ordinance provides that election or political signs must be set back a minimum of five feet from the property line.

16. In addition, Subsection (J)(3) provides, in relevant part, that election or political signs shall not exceed four feet in height, four feet in width, or 16 square feet in total, and that "the sign height including posts or other method of installation or mounting shall not exceed six feet above the ground...[]"

17. The Sign Ordinance also contains durational limits for the placement of election or political signs. Subsection (J)(5) provides that "No signs shall be placed on any property prior to Labor Day for the November election and March 1 for the May election." Subsection (J)(6) provides that "All political signs must be removed no later than seven calendar days after the date of the election."

18. The Sign Ordinance also requires that, "In accordance with election law requirements, each sign must provide the name of the campaign fund which paid for the printing of the sign." §585-16(J)(7).

19. The Sign Ordinance also provides that "The number of signs on any particular parcel of real property shall be two per candidate or political campaign ticket." §585-16(J)(8).

20. The Sign Ordinance further provides that any violation of the Ordinance will result in a mandatory \$1,000 fine for a first offense, \$1,250 for a second offense, and, for a third offense, up to 90 days in County jail or 90 days of community service, along with up to a \$1,250 fine. §585-16(J)(15). The Ordinance also states that the said penalties shall be imposed against "the political campaign or candidates or property owner" for violations. Id.

C. The Summonses

21. The Summonses were issued to the four Plaintiffs (among others) for signs placed on their private property at their homes, as well as to CAC itself as the "political campaign" allegedly liable for violations of the Sign Ordinance.

1. George Panagiotou

22. Plaintiff George Panagiotou is an individual who resides at 54 Prospect Street in Lodi. Plaintiff Panagiotou was also one of the candidates for the BOE, as part of the CAC slate of candidates.

23. In the weeks leading up to the April 16, 2024 election, Plaintiff Panagiotou exercised his free-speech rights by placing a sign supporting the CAC candidates, including himself, at his home. Plaintiff Panagiotou also placed a sign at his office address located at 246 Union Street in Lodi.

24. On April 8, 2024, Zoning Officer Nicholas Melfi issued Summons and Complaint No. SC-5456 to Panagiotou for the sign at his home, for the alleged violation of §585-16(J)(3), prohibiting election or political signs taller than six feet, and exceeding 16 square feet in total. (As noted below, the Zoning Officer issued a separate Summons for the sign at Panagiotou's office address.)

25. The said Summons and Complaint was pending at the time of the filing of this Complaint.

2. Joan Mastrofilipo

26. Joan Mastrofilipo is an individual who resides at 113 Arnot Street in Lodi.

27. Plaintiff Mastrofilipo also had a sign at her home supporting the CAC candidates for the April 16, 2024 election.

28. On April 8, 2024, Officer Melfi issued Summons and Complaint No. SC-5458 to Mastrofilipo, for the alleged violation of §585-16(J)(3), prohibiting election or political signs taller than six feet, and exceeding 16 square feet in total.

29. The said Summons and Complaint was dismissed by the Borough prior to the scheduled court appearance.

3. Bernard Guarino

30. Bernard Guarino is an individual who resides at 423 Passaic Avenue in Lodi.

31. As with the other Plaintiffs, Plaintiff Guarino also put up a sign at his home supporting the CAC candidates for the April 16, 2024 election.

32. On April 8, 2024, Officer Melfi issued Summons and Complaint No. SC-5459 to Guarino, for the alleged violation of §585-16(J)(3), prohibiting election or political signs taller than six feet, and exceeding 16 square feet in total.

33. The said Summons and Complaint was dismissed by the Borough prior to the scheduled court appearance.

4. Joao Mendes

34. Joao Mendes is an individual who resides at 29 East Place in Lodi.

35. As with the other Plaintiffs, Plaintiff Mendes also put up a sign at his home supporting the CAC candidates for the April 16, 2024 election.

36. On April 8, 2024, Officer Melfi issued Summons and Complaint No. SC-5457 to Mendes, for the alleged violation of §585-16(J)(3), prohibiting election or political signs taller than six feet, and exceeding 16 square feet in total.

37. The said Summons and Complaint was dismissed by the Borough prior to the scheduled court appearance.

5. Citizens Against Corruption

38. Officer Melfi also issued the following Summonses and Complaints to the CAC campaign, with an address of 246 Union Street, Lodi, care of candidate George Panagiotou. All of the said Summonses and Complaints were for the same violation of §585-16(J)(3), prohibiting election or political signs taller than six feet, and exceeding 16 square feet in total.

(a) Summons and Complaint No. SC-5450, issued on March 26, 2024, for the alleged Ordinance violation at the home of Plaintiff Mendes.

(b) Summons and Complaint No. SC-5451, issued on March 26, 2024, for the alleged Ordinance violation at the home of Plaintiff Guarino.

(c) Summons and Complaint No. SC-5454, issued on March 27, 2024, for the alleged Ordinance violation at a home located on Corabelle Avenue.

(d) Summons and Complaint No. SC-5453, issued on March 26, 2024, for the alleged Ordinance violation at the home of Plaintiff Mastrofilipo.

(e) Summons and Complaint No. SC-5452, issued on March 26, 2024, for the alleged Ordinance violation at the home of Plaintiff Panagiotou.

(f) Summons and Complaint No. SC-5455, issued on April 2, 2024, for the alleged Ordinance violation at Panagiotou's office address at 246 Union Street in Lodi.

(g) Summons and Complaint No. SC-5621, issued on April 12, 2024, for the alleged Ordinance violation at a home located on Westminster Place.

39. At the time of the filing of this Complaint, the said Summonses and Complaints issued against CAC had not been dismissed, and were pending.

D. The Selective Enforcement of the Sign Ordinance

40. The unequal manner in which the Sign Ordinance was enforced here illustrates the constitutional problems

inherent in applying an Ordinance that regulates signs pursuant to their content.

41. As noted, the above Summonses were all issued prior to the election, against Plaintiffs who had placed signs on their property supporting the CAC slate of candidates.

42. Based on Plaintiffs' investigation, no similar Summonses were issued prior to the election against residents who placed signs on their property supporting the "New Voices" ("NV") candidates, even though Plaintiffs had observed that the signs for the NV candidates also violated the Ordinance, and indeed had been put up weeks before the CAC signs.

43. For example, the Plaintiffs observed that numerous NV campaign signs violated §585-16(J)(2) of the Ordinance, which provides that election or political signs must be set back minimally five feet from the property lines. Other NV campaign signs violated §585-16(J)(6), which required the signs' removal no later than seven days after the election.

44. The Plaintiffs reasonably suspected, based on the known political affiliations of Borough officeholders, that Borough officials would likely be supportive of the NV candidates for the BOE, and thus would be less inclined to

issue Summonses for NV signs that violated the Ordinance, or even to investigate alleged violations for NV signs.

45. The Plaintiffs complained to Borough officials about the fact that no Summonses had been issued to residents who had put up signs supporting the NV candidates, even though many of those signs also violated the Sign Ordinance. The Plaintiffs documented to Borough officials, including with photographs, the locations where the NV signs were in violation of the Sign Ordinance.

46. In response, Borough officials did eventually issue some Summonses for NV signs that violated the Ordinance. However, even though the Plaintiffs had documented more than 50 violations by the NV campaign, Borough officials ultimately issued only eight Summonses for NV signs.

47. In addition, when it came to issuing these Summonses, Borough officials only ticketed the NV campaign itself (care of the candidate and NV campaign manager Alcenovel Bautista), and did not ticket (or threaten with punitive fines) the individual property owners - the way they had done with the Plaintiffs. Moreover, the Summonses issued for the NV sign violations were issued only *after* the election had already taken place.

48. The Summonses issued for the NV sign violations thus did not have the same impact on residents' free-speech rights, as did the ticketing of the Plaintiffs. (Of course, the ticketing of the NV campaign was nonetheless unconstitutional as well.) Indeed, the few Summonses grudgingly issued by the Borough to the NV campaign (and only because the Plaintiffs had complained about selective enforcement) was nothing more than a half-hearted effort by the Borough to appear evenhanded, when in fact Borough officials were squarely on the side of the NV candidates.

49. As a proximate result of the Defendants' violations of their civil rights, the Plaintiffs have suffered significant losses, including mental anguish, emotional distress, loss of civil rights, attorney fees, and other damages, all to their great loss and detriment.

FIRST COUNT
**(UNCONSTITUTIONALITY OF THE BOROUGH'S SIGN
ORDINANCE - NEW JERSEY CIVIL RIGHTS ACT)**

50. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth at length herein.

51. This action is brought pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10-6-1 et seq. (the "NJCRA"), to have the Court declare the Borough Sign Ordinance void and unenforceable, for violation of the Plaintiffs' rights to free speech, as protected by Article 1, Paragraph 6 of the

New Jersey Constitution, as well as the First Amendment to the U.S. Constitution.

52. To begin with, the Sign Ordinance includes no definition of what is an “election sign” and what is a “political sign” for purposes of determining what conduct is actually proscribed under the Ordinance.

53. Further, the Ordinance regulates the placement of “election or political signs” in a manner different than other types of signs. The Ordinance is thus a content-based speech law that is presumptively unconstitutional under Reed v. Town of Gilbert, 576 U.S. 155 (2015).

54. Pursuant to Reed, such content-based speech laws are subject to a strict-scrutiny constitutional analysis, and can be upheld only if they are narrowly tailored to serve a compelling interest of the state (or here, municipality).

55. Here, on the face of the Ordinance, the Borough cannot satisfy its burden of demonstrating that its special regulation of “election or political signs” is narrowly tailored to serve a compelling municipal interest. Indeed, the Ordinance contains no statement of the legislative purpose or intent behind treating election or political signs differently than other types of signs.

56. To the extent that the Borough would now articulate a concern for aesthetics or traffic safety as the legislative motives for the Sign Ordinance, for example (though no such benign motives are articulated in the Ordinance itself), such motives would not justify the Ordinance's differentiation between the (undefined) category of "election or political signs" and other types of signs.

57. Indeed, even assuming arguendo that the Borough had a compelling municipal interest in preserving its aesthetic appeal and traffic safety, differentiating between "election or political signs" and other types of signs is underinclusive.

58. By way of example, the Ordinance would on its face permit a sign taller than four feet that carried an ideological message (e.g., "Be Kind to Everyone") or a religious one ("Jesus Saves Lives"), while prohibiting the same size sign advocating for a candidate for office, or conveying a political message. Further, the "Be Kind to Everyone" or "Jesus Saves Lives" sign would have no durational limit under the Ordinance, unlike election or political signs. A resident hanging a "Be Kind to Everyone" or "Jesus Saves Lives" sign, moreover, would not have to

provide the name of the person who paid for the sign, unlike election or political signs.

59. Indeed, the Ordinance is structured so that Borough officials charged with enforcing it must necessarily read and interpret the message conveyed by the sign, to determine whether it was an "election or political sign" subject to regulation. If for example a resident posted a "Black Lives Matter" sign which violated the size limits or other rules for election or political signs, Borough officials would have to determine if the message conveyed was a "political" one, rather than a message which was ideological (or something else), without any definition or objective standard to guide their determination.

60. The Plaintiffs' constitutional claims herein are both facial challenges to the Ordinance, as well as challenges to the Ordinance as it was applied to them in this instance, or would be applied to them in the future.

61. Accordingly, the Plaintiffs seek equitable relief voiding the Borough's Sign Ordinance and enjoining the Defendants from further enforcing it, along with other appropriate relief.

62. Plaintiffs are also entitled to an award of reasonable counsel fees and costs, pursuant to the fee-shifting provision of the NJCRA.

WHEREFORE, Plaintiffs George Panagiotou, Joan Mastrofilipo, Bernard Guarino, and Joao Mendes demand judgment against the Defendants, jointly and severally, for:

(a) an Order voiding the Sign Ordinance and enjoining the Defendants from further enforcing the Ordinance, with other appropriate injunctive relief;

(b) costs of suit;

(c) attorneys' fees; and

(b) such other and further relief as the Court may deem fair and equitable.

SECOND COUNT
**(INTERFERENCE OR ATTEMPTED INTERFERENCE WITH
RIGHT TO FREEDOM OF SPEECH - NEW JERSEY CIVIL RIGHTS ACT)**

63. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth at length herein.

64. The Defendants, through their above-described acts, including issuing Summonses that threatened \$1,000 per-day fines per an unconstitutional Ordinance, interfered with or attempted to interfere with the Plaintiffs' exercise or enjoyment of their right to freedom of speech, as protected by Article 1, Paragraph 6 of the New Jersey Constitution, as well as the First Amendment to the U.S. Constitution, in violation of the NJCRA.

65. The individual Defendants are all "persons" within the meaning of the NJCRA, who were acting under color of law.

66. The individual Defendants violated the Plaintiffs' clearly established constitutional right to freedom of speech.

67. The Borough itself is liable on this Count where the interference or attempted interference with Plaintiffs' constitutional rights was the result of the execution of a Borough policy (i.e., the enacted Sign Ordinance), and/or a deliberate decision made by officials with policy-making authority to falsely charge the Plaintiffs with a quasi-criminal offense, and to take other retaliatory action against the Plaintiffs for the purpose of interfering with constitutionally protected speech.

68. As a proximate result of the Defendants' violation of the NJCRA, the Plaintiffs have been damaged.

69. In addition to compensatory damages, an award of punitive damages is warranted, where the Defendants acted with malicious and wanton disregard for Plaintiffs' constitutional rights.

70. Plaintiffs are also entitled to an award of reasonable counsel fees and costs, pursuant to the fee-shifting provision of the NJCRA.

WHEREFORE, Plaintiffs George Panagiotou, Joan Mastrofilipo, Bernard Guarino, and Joao Mendes demand judgment against the Defendants, jointly and severally, for:

(a) an Order voiding the Sign Ordinance and enjoining the Defendants from further enforcing the Ordinance, with other appropriate injunctive relief;

(b) compensatory damages;

(c) punitive damages;

(d) interest;

(e) costs of suit;

(f) attorneys' fees; and

(g) such other and further relief as the Court may deem fair and equitable.

THIRD COUNT
(FREE SPEECH RETALIATION -
NEW JERSEY CIVIL RIGHTS ACT)

71. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth at length herein.

72. As described above, the Plaintiffs engaged in the constitutionally protected conduct of placing signs on their private property, which signs reflected the Plaintiffs' political beliefs and exercise of their right to free speech.

73. The Defendants, in response, took retaliatory action sufficient to deter an ordinary person from engaging in such constitutionally protected conduct.

74. The Defendants' retaliatory acts included, without limitation: (a) making intimidating demands that Plaintiffs remove the constitutionally protected signs upon threat of devastating \$1,000 per-day fines; and (b) bringing quasi-criminal charges, unsupported by probable cause.

75. There was an obvious causal connection between the Plaintiffs' constitutionally protected speech, and the Defendants' retaliatory acts in response.

76. The individual Defendants are all "persons" within the meaning of the NJCRA, who were acting under color of law.

77. The Borough itself is liable on this Count where the First Amendment retaliation against Plaintiffs was the result of the execution of a Borough policy (i.e., the enacted Sign Ordinance) or custom, and/or where its officials with policy-making authority made a deliberate decision to pursue the said course of unlawful retaliation against Plaintiffs.

78. As a proximate result of the Defendants' violation of the NJCRA, the Plaintiffs have been damaged.

79. In addition to compensatory damages, an award of punitive damages is warranted, where the Defendants acted with malicious and wanton disregard for Plaintiffs' constitutional rights.

80. Plaintiffs are also entitled to an award of reasonable counsel fees and costs, pursuant to the fee-shifting provision of the NJCRA.

WHEREFORE, Plaintiffs George Panagiotou, Joan Mastrofilipo, Bernard Guarino, and Joao Mendes demand judgment against the Defendants, jointly and severally, for:

(a) an Order voiding the Sign Ordinance and enjoining the Defendants from further enforcing the Ordinance, with other appropriate injunctive relief;

(b) compensatory damages;

(c) punitive damages;

(d) interest;

(e) costs of suit;

(f) attorneys' fees; and

(g) such other and further relief as the Court may deem fair and equitable.

FOURTH COUNT
(CIVIL CONSPIRACY TO VIOLATE PLAINTIFFS'
CIVIL RIGHTS - NEW JERSEY CIVIL RIGHTS ACT)

81. Plaintiffs repeat and reallege all of the preceding paragraphs as if set forth at length herein.

82. The individually named Defendants reached an understanding to interfere with, or attempt to interfere with, the Plaintiffs' constitutionally protected speech, and/or to retaliate against the Plaintiffs for the exercise of their right to freedom of speech; and then acted in concert to carry out the understanding.

83. The Borough itself is liable on this Count where the said conspiracy to violate the Plaintiffs' civil rights was the result of the execution of a Borough policy or custom, and/or of a deliberate decision made by officials with policy-making authority.

84. As a proximate results of the Defendants' civil conspiracy, the Plaintiffs were damaged.

85. In addition to compensatory damages, an award of punitive damages is warranted where the Defendants acted with malicious and wanton disregard for Plaintiffs' constitutional rights.

86. Plaintiffs are also entitled to an award of reasonable counsel fees and costs, pursuant to the fee-shifting provision of the NJCRA.

WHEREFORE, Plaintiffs George Panagiotou, Joan Mastrofilipo, Bernard Guarino, and Joao Mendes demand judgment against the Defendants, jointly and severally, for:

(a) an Order voiding the Sign Ordinance and enjoining the Defendants from further enforcing the Ordinance, with other appropriate injunctive relief;

(b) compensatory damages;

(c) punitive damages;

(d) interest;

(e) costs of suit;

(f) attorneys' fees; and

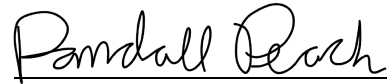
(g) such other and further relief as the Court may deem fair and equitable.

DEMAND FOR TRIAL BY JURY

The Plaintiffs hereby demand a trial by a jury of no less than six persons, on all issues so triable.

R. 4:5-1 CERTIFICATION

I hereby certify that, other than the pendency in Municipal Court of certain Summonses which are the basis of this civil action, the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action.

A handwritten signature in black ink, reading "Randall J. Peach", is written over a horizontal line.

RANDALL J. PEACH, ESQ.
Attorney for Plaintiffs
NJ Bar ID No. 039541992

Dated: June 3, 2024