

February 4, 2025

South Haven Planning Commission
c/o Kelly Getman-Dissette
Planning and Zoning Administrator
South Haven City Hall
539 Phoenix Street
South Haven, Michigan 49090

Sent via U.S. Mail and Electronic Mail (kdissette@southhavenmi.gov)

Dear South Haven Planning Commission members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by sign restrictions in South Haven's Zoning Ordinance that limit the number of non-permanent signs on residential lots to four.¹ Sign restrictions must be narrowly tailored to serve a significant government interest while leaving open ample alternative channels for communication.² South Haven's sign ordinance fails both these tests, so the city must amend its ordinance to comply with constitutional standards. FIRE is happy to assist in that endeavor at no cost.

The U.S. Court of Appeals for the Sixth Circuit, the decisions of which bind South Haven, has favorably cited a Fourth Circuit case that invalidated a similar numerical restriction.³ In *Arlington County*, the Fourth Circuit began its analysis by holding numerical sign limits restrict speech rather than conduct because "[c]ommunication by signs and posters is virtually pure speech."⁴ The court noted that the limit at issue, which restricted residents to two signs, burdened speech "by preventing homeowners from expressing support for more than two candidates when there are numerous contested elections" and that this burden fell particularly heavily on voters living with people holding opposing views.⁵

¹ SOUTH HAVEN, MICH., CITY OF SOUTH HAVEN ZONING ORDINANCE, art. 22, § 2201.08(1) (2025), <https://southhavencitymi.documents-on-demand.com/document/2894372b-720d-ef11-a401-000c29a59557/Zoning%20Ordinance>.

² See *Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996).

³ *Id.* at 388 (discussing *Arlington Cnty. Republican Comm. v. Arlington Cnty.*, 983 F.2d 587 (4th Cir. 1993)).

⁴ *Arlington Cnty.*, 983 F.2d at 593 (quoting *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir. 1976)).

⁵ *Id.* at 594 ("Also, if two voters living within the same household support opposing candidates, the two-sign limit significantly restricts their ability to express support through sign posting.").

The court next assumed (without deciding) that the sign restriction at issue was content-neutral, which meant it would need to be narrowly tailored to further a substantial government interest and leave open ample alternative means of communication.⁶ The limit failed both these requirements.

The lack of narrow tailoring rested not on the limit being two signs as opposed to a larger number, but rather on the county's general failure to establish that limiting the number of signs was a narrowly tailored means of furthering any legitimate government interest.⁷ In fact, the court "question[ed] whether the County needs to limit the number of signs on private property to protect aesthetics," noting the Supreme Court's observation that "private property owners' esthetic concerns will keep the posting of signs on their property within reasonable bounds."⁸

Regarding sufficient alternative means of communication, the court rejected as too time-intensive or expensive the government's proposed alternatives like giving speeches in public places, distributing flyers, door-to-door and public canvassing, and appearing at citizen group meetings.⁹ This "laundry list" of alternatives failed to recognize how a two-sign limit infringed homeowners' rights, leaving no "viable alternative to the homeowner *on his property*."¹⁰

Although South Haven allows four signs rather than just two, its ordinance suffers the same flaws as the one the Fourth Circuit invalidated. The court's reasoning applies with equal force to a marginally more permissive four-sign limit, which unnecessarily burdens speech for the same reasons the two-sign limit did. Even assuming South Haven's limit is content neutral, the city cannot show that banning every resident from placing more than four signs, no matter how small or unobtrusive they are, is narrowly tailored to serving any substantial city interest in aesthetics or traffic safety. And, as the Fourth Circuit explained, alternative means of communication like distributing flyers or canvassing are not adequate substitutes for yard signs. That is equally true whether residents are permitted to display four signs or two.

We respectfully request a substantive response to this letter no later than February 18, 2025.

Sincerely,



M. Brennen VanderVeen, Esq.
Program Officer, Public Advocacy

⁶ *Id.* at 593–94.

⁷ *Id.* at 594.

⁸ *Id.* (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 811 (1984)). The Fourth Circuit also observed that, during the time the preliminary injunction entered below was in force, the government "could not show any specific aesthetic or traffic problems" that arose. *Id.*

⁹ *Id.* at 594–95.

¹⁰ *Id.* at 595 (emphasis in the original).