

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

ALEXIS LUTTRELL,

*Plaintiff,*

v.

CITY OF GERMANTOWN,  
TENNESSEE,

*Defendant.*

Civil Action No. 2:25-cv-02153

Chief Judge Sheryl H. Lipman

**PLAINTIFF'S BRIEF  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

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## INTRODUCTION

For Christmas, some Americans hang multi-colored lights on their home or inflate a Santa outside. Some arrange nativity scenes in their yard. And others—inspired by *A Christmas Carol*’s ghosts, *The Nightmare Before Christmas*’s skeletons, or their own imaginations—incorporate spookier elements into their displays. Regardless of how Americans choose to celebrate a particular holiday, the First Amendment protects their creative expression in decorating their yards and homes.

But Defendant City of Germantown tries to dictate how its residents celebrate holidays. Its Holiday Decorations Ordinance prohibits residents from having displays on their private property more than 45 days before or 30 days after the “intended” holiday. Germantown, Tenn., Code § 11-33(a) (2024). Germantown officials decide, based on their own subjective tastes, what decorations are “intended” for a particular holiday. Because the Holiday Decorations Ordinance targets protected expression based on its content, discriminates against expression based on viewpoint, and is impermissibly vague, the ordinance violates the First and Fourteenth Amendments to the U.S. Constitution.

Plaintiff Alexis Luttrell, a resident of Germantown, likes skeletons. As the seasons change, she incorporates a pair of decorative skeletons into different holiday displays in her yard, including into her Christmas decor. But Germantown officials believe skeletons celebrate only Halloween. They cited Luttrell for violating the Holiday Decorations Ordinance, threatening her with fines and an order requiring her to take down her decorations. Luttrell wishes to continue creatively incorporating

decorative skeletons into her holiday displays in the years to come. But the Holiday Decorations Ordinance forces her either to self-censor her protected expression or to continue in her creative holiday expression at the peril of additional citations, fines, and other penalties.

Luttrell accordingly brings her challenges to the constitutionality of the Holiday Decorations Ordinance, which continues to chill her expression and that of her fellow Germantown residents. Because she is likely to succeed on the merits of each of the First Amendment claims she raises, this Court should preliminarily enjoin Germantown from enforcing the ordinance.

### **STATEMENT OF FACTS**

The City of Germantown maintains a Holiday Decorations Ordinance that restricts its residents' freedom to decorate their homes and yards with holiday decorations. The ordinance provides:

Holiday and seasonal decorations, including, but not limited to, holiday lights on houses or in the yard or shrubbery, yard ornaments or decorations, and the like, shall not be installed or placed more than 45 days before the date of the holiday for which said decorations are intended and shall be removed within a reasonable period of time, not to exceed 30 days, following the date of the holiday for which said decorations were intended. Holiday lights, even if not illuminated, are not permitted to remain on any house or structure year-round.

Germantown, Tenn., Code § 11-33(a).

The ordinance vests city officials with wide discretion to arbitrarily punish residents who use decorations that—in the subjective view of city officials—are not “intended” to celebrate an upcoming, current, or recent holiday. The ordinance provides no guidance to the public or to enforcing officials which holidays count for

purposes of the ordinance, what decorations are appropriately “intended” to celebrate a qualifying holiday, or how to make those determinations. If an enforcing official unilaterally decides that decorations are “intended” to celebrate the wrong holiday, residents may face citations, fines, and even city officials entering their property and forcibly removing their decorations. *Id.* §§ 11-8, 11-9(a), 1-10.

Alexis Luttrell is a Germantown resident subject to the Holiday Decorations Ordinance. Luttrell Decl. ¶ 2. Luttrell and her daughter are members of a Facebook group for owners of decorative skeletons—a group boasting over 290,000 members, including other residents of Germantown—in which members post photographs showing how they creatively incorporate decorative skeletons into yard displays for different holidays. *Id.* ¶ 6, Ex. A. Luttrell enjoys creating displays in her yard featuring decorative skeletons to celebrate holidays in a fun and whimsical way, bringing joy to herself, her family, and passersby. *Id.* ¶ 25.

In October 2024, with the help of her daughter and sister, Luttrell decorated her yard for Halloween. *Id.* ¶ 8. She created a display that included two decorative skeletons: an eight-foot human and a correspondingly sized dog. *Id.* ¶¶ 5, 8. Germantown took no action against her for the skeleton display at Halloween. *Id.* ¶ 9.

Before Election Day on November 5, 2024, Luttrell placed campaign signs supporting various candidates in front of and behind her skeletons, including signs supporting Kamala Harris’s campaign. *Id.* ¶ 10. The human skeleton held a flag depicting Donald Trump’s hairdo with the words “Nope” and “Not again.” *Id.* This time, she received a warning from city officials. On December 6, 2024, a Germantown



code officer visited Luttrell's property and left a notice of violation. *Id.* ¶ 11, Ex. B. That notice referred to the Holiday Decorations Ordinance and gave Luttrell seven days to correct the alleged violation. *Id.* ¶ 13, Ex. B.

Shortly after receiving the notice, Luttrell redecorated her yard for Christmas. *Id.* ¶ 14. Her display featured an inflatable Santa and another Christmas inflatable featuring Santa. *Id.* ¶ 15. It also included her decorative skeletons, with the human in a green wreath necklace and green-and-red tutu, holding a leash (made from garland) leading the dog, which wore a Christmas-tree hat:



*Id.* ¶ 15, Ex. C.

On January 6, 2025, Germantown issued Luttrell a citation, alleging she violated the Holiday Decorations Ordinance and summoning her to Germantown

Municipal Court on February 13, 2025.<sup>1</sup> *Id.* ¶¶ 17, 19, Ex. D. Commenting on Luttrell’s holiday skeletons, Cameron Ross, Germantown’s Economic and Community Development Director, told a reporter, “The resident in question has claimed the skeletons are Christmas decorations, but the City maintains they are Halloween-themed and fall outside the ordinance’s allowances.” *Id.* Ex. F, at 6.

Luttrell plans to redecorate her yard and skeletons for upcoming holidays. *Id.* ¶ 24. She has already redecorated her yard for Valentine’s Day. *Id.* ¶ 22. In that display, the skeletal human wears a red-and-white tie-dye heart shirt, a red flower crown, and a red tutu, holds an inflatable heart and a red-and-silver leash, while the dog sports a matching red flower crown and a “Free Kisses” bandana. *Id.* They are surrounded by two inflatable hearts, an inflatable “Love” sign, multiple heart decorations, and a “Love is Love” sign:



*Id.* ¶ 22, Ex. E.

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<sup>1</sup> The hearing was subsequently continued to March 13, 2025. *Id.* ¶ 20.

Luttrell intends to continue incorporating her decorative skeletons into holiday displays for St. Patrick's Day, Easter, Pride Month, and other holidays in the coming months and years. *Id.* ¶ 24.

Germantown, meanwhile, intends to continue enforcing its Holiday Decorations Ordinance against Luttrell and other residents who display yard or house decorations that officials decide celebrate the wrong holiday. According to Germantown's Economic and Community Development Director, Germantown has enforced the ordinance against at least nine residents because of decorative skeletons, most of whom took down their skeletons to avoid fines or other penalties. *Id.* Ex. F, at 6. Luttrell thus files this preliminary injunction motion seeking to enjoin enforcement of the Holiday Decorations Ordinance while this litigation proceeds.

### **ARGUMENT**

Unless this Court grants a preliminary injunction, Germantown will continue to violate Luttrell's and other residents' First Amendment rights, requiring them to either self-censor protected expression or face citations, fines, and penalties if they continue to express themselves in ways the Germantown officials deem inappropriate for "intended" holidays. Luttrell is entitled to a preliminary injunction prohibiting enforcement of the Holiday Decorations Ordinance because she can demonstrate (1) a strong likelihood of success on the merits, (2) irreparable loss of her constitutional rights absent injunctive relief, (3) that an injunction would cause no harm to others, and (4) that the public interest always favors enjoining enforcement of the unconstitutional ordinance. *See Brindley v. City of Memphis*, 934 F.3d 461, 466 (6th

Cir. 2019). In cases invoking the First Amendment, likelihood of success is the “crucial inquiry” because the remaining factors “largely depend on the constitutionality of the challenged action.” *Id.* at 467 (cleaned up).

Luttrell is likely to succeed on the merits of her challenge to the Holiday Decorations Ordinance for three separate reasons. First, the ordinance violates the First Amendment because it censors expression based on content—prohibiting decorations based on whether they are “intended” for a particular holiday—rendering the ordinance subject to strict scrutiny. The ordinance fails strict scrutiny because it is not narrowly tailored to any compelling government interest. Second, the ordinance violates the First Amendment because it discriminates against expression based on viewpoint, restricting expression that disagrees with government officials’ subjective view of what decorations appropriately celebrate a particular holiday. Third, the ordinance is unconstitutionally vague, providing no guidance to the public or enforcing officials on what decorations are “intended” to celebrate a qualifying “holiday” or how to make those determinations. Any one of these constitutional infirmities alone is enough to warrant a preliminary injunction.

**I. Luttrell Is Likely to Succeed on the Merits Because the Holiday Decorations Ordinance Is Content Based, Viewpoint Discriminatory, and Unconstitutionally Vague.**

**A. The Holiday Decorations Ordinance violates the First Amendment because it is content based and fails strict scrutiny.**

The Holiday Decorations Ordinance targets protected expression based on content. That subjects the ordinance to strict scrutiny, a standard the ordinance fails. *See Reed v. Town of Gilbert*, 576 U.S. 155, 159 (2015).

**1. The Holiday Decorations Ordinance restricts expression based on content.**

There is no doubt the Holiday Decorations Ordinance targets expression the First Amendment protects. Holiday decorations are inherently expressive, whether intended to commemorate a holiday, to inspire joy or laughter in others, or to offer social or political commentary—or, in Luttrell’s case, a combination of all three. *See* Luttrell Decl. ¶¶ 25–26. The First Amendment protects expression occurring through mediums other than “written or spoken words,” regardless of whether it conveys a “narrow, succinctly articulable message.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995).

The Supreme Court has accordingly extended the First Amendment’s protection to a range of expression, including displaying a flag, wearing an armband, and marching in a parade. *Id.* (collecting Supreme Court cases protecting nonverbal expression). Put differently, the First Amendment protects “[a]ll manner of speech—from ‘pictures, films, paintings, drawings, and engravings,’ to ‘oral utterance and the printed word.’” *303 Creative LLC v. Elenis*, 600 U.S. 570, 587 (2023) (quoting *Kaplan v. California*, 413 U.S. 115, 119–20 (1973)). Decorations intended to celebrate a holiday fit well within this range of protected expression. *See, e.g., Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (erecting a cross as part of a Christmas display was “as fully protected under the Free Speech Clause as secular private expression”); *Congregation Lubavitch v. City of Cincinnati*, 997 F.2d 1160, 1164 (6th Cir. 1993) (displaying an eighteen-foot menorah during Chanukah was speech “protected by the free speech provisions of the First Amendment”); *Solantic*,



*LLC v. City of Neptune Beach*, 410 F.3d 1250, 1265–66 (11th Cir. 2005) (treating display of “a giant illuminated Santa Claus” differently from “a figure of . . . the President or the Mayor” restricted First Amendment–protected speech).

Because the Holiday Decorations Ordinance targets expression based on whether expression is “intended” to celebrate a particular holiday, it is a content-based regulation of expression subject to strict scrutiny. *See Reed*, 576 U.S. at 159. A content-based regulation of expression is one that differentiates based on the expression’s topic, function, or message, or that otherwise requires reference to the content of the regulated expression. *Id.* at 163–64. The Supreme Court’s *Reed* decision is instructive. There, the Supreme Court struck down a sign ordinance that put different restrictions on different categories of signs based on the type of information the signs conveyed—for example, different restrictions for political signs, ideological signs, and signs conveying information about an event. *Id.* at 159–61. Because the sign ordinance “single[d] out specific subject matter for differential treatment,” it was a content-based regulation of speech subject to strict scrutiny. *Id.* at 169.

Applying the same logic, courts have repeatedly held that ordinances carving out “holiday signs” or “holiday decorations” for different treatment from other expression are content-based regulations subject to strict scrutiny. *See, e.g., Camp Hill Borough Republican Ass’n v. Borough of Camp Hill*, 101 F.4th 266, 270 (3d Cir. 2024) (striking down ordinance putting different restrictions on signs or decorations depending on whether they “celebrate a holiday”); *Solantic, LLC*, 410 F.3d at 1265–66 (enjoining ordinance that exempted “[h]oliday lights and decorations” from permit

requirement applying to most other communicative displays); *Sugarman v. Village of Chester*, 192 F. Supp. 2d 282, 296–302 (S.D.N.Y. 2002) (striking down several ordinances imposing different permit and durational requirements on the display of “holiday decoration signs” or “holiday decorations” as compared to the display of other signs and symbols).

So too here. The Holiday Decorations Ordinance regulates holiday decorations differently than any other decorations or displays that residents may put on their property. To apply the ordinance, Germantown officials must determine the “topic” or “message” of particular decorations—in this case, whether the decorations are intended to celebrate a holiday—and then “single[] out” that category of decorations for differential treatment. *Reed*, 576 U.S. at 163–64, 169. That makes the ordinance a content-based restriction on expression subject to strict scrutiny.

## **2. The Holiday Decorations Ordinance fails strict scrutiny.**

And the ordinance fails strict scrutiny. A content-based regulation of speech is “presumptively unconstitutional” and can survive strict scrutiny only if it (a) furthers a “compelling governmental interest” and (b) is “narrowly tailored to that end.” *Reed*, 576 U.S. at 163, 171. The Holiday Decorations Ordinance fails at the first step.

Germantown lacks any legitimate interest in dictating how and when residents decorate their own homes for the holidays, let alone any interest even remotely akin to a “compelling” government interest. *See, e.g., Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010) (classifying “combatting terrorism” as a compelling government interest); *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (classifying “protect[ing] the right to vote” as a compelling government interest). According to Germantown’s

Economic and Community Development Director, the Holiday Decorations Ordinance’s purpose is to “ensure community standards.” Luttrell Decl. Ex. F, at 5. But courts have regularly rejected the argument that such aesthetic concerns are a compelling government interest. *See, e.g., City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994) (holding that “minimizing the visual clutter associated with signs” was not a compelling government interest); *Cent. Radio Co. Inc. v. City of Norfolk*, 811 F.3d 625, 633–34 (4th Cir. 2016) (collecting cases declining to recognize aesthetics as a compelling government interest). And because the Holiday Decorations Ordinance restricts expression at one’s own home, Germantown’s ordinance is all the more suspect, as our law and culture accord “special respect” for individual liberty at the home. *City of Ladue*, 512 U.S. at 58 (striking down ordinance prohibiting homeowners from displaying certain signs on their property). Without a compelling government interest, Germantown’s ordinance fails strict scrutiny and cannot stand.

Even if Germantown could muster some sufficiently compelling government interest—and it is difficult to imagine what that would be—the Holiday Decorations Ordinance fails strict scrutiny because it is not narrowly tailored. A regulation fails this step of strict scrutiny if it is not the “least restrictive means” of addressing its articulated interest. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813, 827 (2000). A regulation also fails narrow tailoring if it is “underinclusive,” prohibiting some expression purportedly harming the government interest while failing to address other causes of “appreciable damage to that supposedly vital interest.” *Reed*,



576 U.S. at 172 (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002)).

Here, the Holiday Decorations Ordinance is underinclusive because, whatever the alleged harm caused by a particular decoration, Germantown allows the decoration to cause that harm at least several months per year. And if the same decoration is not “intended” to celebrate any holiday and is therefore not subject to the ordinance at all, Germantown allows the putative harm year-round. Whereas a resident who “intended” to celebrate Independence Day by raising an American flag would be subject to the ordinance, another resident displaying the same flag out of general patriotism could presumably fly it year-round. The same goes for a resident erecting a Star of David in her yard specifically for Chanukah, versus a resident maintaining the same Star of David year-round as a general expression of her faith. The same for a resident raising a rainbow flag specifically for Pride Month, versus one who flies the flag year-round to express support for gay rights. That the Holiday Decorations Ordinance allows the same or similar decorations to be displayed for months every year, or even all year, underscores that Germantown lacks a compelling interest in prohibiting them at all. *See Reed*, 576 U.S. at 172.

Because the Holiday Decorations Ordinance is a content-based restriction that is not narrowly tailored to any compelling government interest, Luttrell’s First Amendment claim is likely to succeed.

**B. The Holiday Decorations Ordinance further violates the First Amendment because it is viewpoint discriminatory.**

Luttrell is likely to succeed on the merits of her First Amendment claim for the additional reason that the Holiday Decorations Ordinance discriminates based on viewpoint. When government regulation targets not only the content of speech but also discriminates against “particular views taken by speakers on a subject,” the “violation of the First Amendment is all the more blatant.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Viewpoint discrimination is an “egregious form of content discrimination” that is “presumed to be unconstitutional.” *Id.*

The Holiday Decorations Ordinance discriminates based on viewpoint because, in restricting expression based on the “intended” holiday of celebration, the ordinance discriminates against expression that disagrees with government officials’ subjective view of what decorations appropriately celebrate which holiday. For example, as to Luttrell’s decorations, Germantown’s Economic and Community Development Director said, “The resident in question has claimed the skeletons are Christmas decorations, but the City maintains they are Halloween-themed and fall outside the ordinance’s allowances.” Luttrell Decl. Ex. F, at 6. But Luttrell is among the many people, in Germantown and across the country, who believe skeletons are a fun and festive component of decorations for non-Halloween holidays and special events. *See, e.g., id.* ¶ 25, Ex. A. Consider residents who may be fans of Tim Burton’s *The Nightmare Before Christmas*, for which any number of skeleton decorations and other items are available at Christmas time, including stockings, ornaments, and skeleton

yard displays.<sup>2</sup> Or others who believe that skeletons may appropriately celebrate holidays from Thanksgiving to Christmas to St. Patrick's Day.<sup>3</sup> Germantown would censor them because their viewpoints differ from those of city officials.

Because Germantown discriminates against differing viewpoints based on what decorations are “intended” for a holiday, the Holiday Decorations Ordinance violates the First Amendment as a viewpoint-discriminatory speech restriction. *See Camp Hill Borough Republican Ass'n*, 101 F.4th at 270 (holding that ordinance treating signs that “celebrate” a holiday differently from other signs discriminated based on viewpoint). This viewpoint discrimination is aggravated by the ordinance's vagueness, which allows officials wide discretion to enforce the ordinance arbitrarily based on their own subjective beliefs, as discussed in the next section. And for the same reasons that the Holiday Decorations Ordinance cannot satisfy strict scrutiny as a content-based speech regulation, as previously discussed, it fails strict scrutiny as a viewpoint-based restriction. *See, e.g., Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 248 (6th Cir. 2015) (“Both content- and viewpoint-based discrimination are subject to strict scrutiny.”).

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<sup>2</sup> *See, e.g., Gemmy Giant Christmas Inflatable Jack Skellington in Santa Outfit*, Target, <https://perma.cc/AC22-PJ2T> (last visited Feb. 12, 2025); *Disney® The Nightmare Before Christmas Stocking*, Kurt. S. Adler, <https://perma.cc/Q9BQ-TCLP> (last visited Feb. 12, 2025); *Hallmark Disney Tim Burton's The Nightmare Before Christmas Jack Skellington Head Christmas Ornament*, Amazon, <https://perma.cc/9QU6-79TZ> (last visited Feb. 12, 2025).

<sup>3</sup> *See, e.g., Ed Gallek & Peggy Gallek, Here to Stay: Resident Wins Battle over Giant St. Patrick's Day Skeleton Display*, Fox 8 (Mar. 10, 2023), <https://perma.cc/SY6R-E444>; Kelly Fisher, *This Cleveland House Displays Skeletons for Christmas and Everyone Loves It*, iHeart (Dec. 17, 2021), <https://perma.cc/8Z64-3LQJ>.

**C. The Holiday Decorations Ordinance violates the Fourteenth Amendment because it is impermissibly vague.**

The Holiday Decorations Ordinance also violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, which prohibits government regulations that are impermissibly vague. *Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 556 (6th Cir. 1999). This concern is heightened in the context of the First Amendment. Vague laws affecting speech chill even more expression by leading citizens to “steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.” *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (cleaned up). Consequently, a regulation affecting speech protected by the First Amendment “demands a greater degree of specificity than in other contexts.” *Smith v. Goguen*, 415 U.S. 566, 573 (1974). A vague regulation may violate due process for either of two reasons, both of which apply here: when it either “fails to provide a person of ordinary intelligence fair notice of what is prohibited” or “is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (citing *United States v. Williams*, 553 U.S. 285, 306 (2008)).

Here, the Holiday Decorations Ordinance contravenes principles of fair notice and cabined discretion for several reasons. First, it provides no guidance on what decorations are ostensibly “intended” to celebrate a particular holiday or how enforcing officials will make those determinations. This leaves officials with discretion to arbitrarily enforce the ordinance based on their own subjective beliefs. Luttrell’s decorations are a case in point. Germantown’s code enforcers never asked

what holiday *she* intended to celebrate with her skeletons; rather, they decided for themselves what holidays her decorations could or could not appropriately celebrate. *See* Luttrell Decl. ¶ 28. The lack of specificity around what the ordinance means by “intended” holiday—including whose intent controls and on what basis officials ascertain the intended holiday—deprives Germantown’s residents of fair notice and gives officials unbounded discretion.

In addition, the Holiday Decorations Ordinance fails to make clear what “holidays” count for purposes of its prohibitions. For example, Germantown officials treat Halloween as a “holiday” for purposes of the ordinance and therefore subject decorations intended for Halloween to the ordinance’s restrictions. *See id.* Ex. F, at 6. But Halloween is neither a federal nor a Tennessee state holiday.<sup>4</sup> Different people celebrate all manner of different holidays.<sup>5</sup> And different people celebrate even the same holidays on different dates. Take Christmas for example. The federal government and Tennessee recognize it on December 25. But people of Filipino descent may begin celebrating as early as September.<sup>6</sup> Orthodox Christians celebrate on January 7.<sup>7</sup> The Holiday Decorations Ordinance fails to give fair notice of both which holidays count and when the clock starts running.

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<sup>4</sup> *Federal Holidays 2025*, U.S. Office of Personnel Management, [perma.cc/4PQG-EVEN](https://perma.cc/4PQG-EVEN) (last visited Feb. 12, 2025); *State Holidays*, Tennessee State Government, [perma.cc/GL8X-7B5G](https://perma.cc/GL8X-7B5G) (last visited Feb. 12, 2025).

<sup>5</sup> *Holidays and Observances in the United States in 2025*, Time and Date, <https://perma.cc/6NVH-GDAZ> (last visited Feb. 12, 2025).

<sup>6</sup> Jewyz Ann Bunyi, *What Makes Filipinos Start Celebrating Christmas as Early as September?*, Asia News Network (Sept. 25, 2024), <https://perma.cc/7BPY-W5HQ>.

<sup>7</sup> *Holidays and Observances in the United States in 2025*, *supra* note 5.

Lacking any specificity, the Holiday Decorations Ordinance allows officials to impose their own beliefs about which holidays qualify, when residents can celebrate them, and how they can celebrate. Due process forbids such arbitrary enforcement of an ill-defined speech regulation. *See, e.g., Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995) (striking down on vagueness grounds a policy prohibiting “offensive” speech, which gave enforcing officials too much discretion because “different people find different things offensive”).

\* \* \*

Based on any one of the Holiday Decorations Ordinance’s three defects—that it is unconstitutionally content based, viewpoint discriminatory, and vague—this Court should conclude that Luttrell is likely to succeed on the merits.

## **II. The Remaining Factors Also Favor a Preliminary Injunction.**

Because Luttrell has shown a strong likelihood of success on the merits of her First Amendment claim, the remaining preliminary injunction factors—irreparable harm, effects on the opposing party, and the public interest—all “fall into place.” *Brindley*, 934 F.3d at 472. As courts have often noted, the “crucial inquiry” in First Amendment cases is success on the merits, and the remaining factors largely depend on the challenged regulation’s constitutionality. *Id.* at 467.

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). Regarding the prospect of harm to Germantown, no harm ensues from enjoining an unconstitutional law, *Brindley*, 934 F.3d at 472, particularly when

the injunction simply allows residents to place holiday decorations of their own choosing on their own homes and lawns. As for the public interest, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Id.* (quoting *Bays v. City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012)). All factors favor preliminarily enjoining the ordinance.

### **III. This Court Should Not Require Luttrell to Post a Bond.**

Federal Rule of Civil Procedure 65(c) only requires a preliminary-injunction movant to post security in an amount “the court considers proper” to cover damages of a party found to be wrongfully enjoined. Fed. R. Civ. P. 65(c). Thus, when the preliminary injunction will not harm any party, this Court has discretion to determine that no security is required at all. *USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 100 (6th Cir. 1982); *Urbain v. Knapp Bros. Mfg. Co.*, 217 F.2d 810, 815–16 (6th Cir. 1954). No harm will ensue from an injunction allowing Germantown residents to display holiday decorations of their choosing on their lawns.

In addition, this Court has discretion to eschew a bond when litigation is in the public interest. *See Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (affirming district court’s refusal to require security based on “the strength of [the preliminary-injunction movant’s] case and the strong public interest involved”). Advancing First Amendment rights is in the public interest, *Brindley*, 934 F.3d at 472, which therefore further supports not requiring Luttrell to post a bond.

## CONCLUSION

The First Amendment protects the rights of Luttrell and her fellow Germantown residents to decorate their homes and yards for the holidays as they wish. The First Amendment does not allow the government to impose its views of what decorations or displays properly or improperly celebrate one holiday or another. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion . . . .” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Luttrell respectfully requests that this Court grant her motion for a preliminary injunction prohibiting Germantown from enforcing the Holiday Decorations Ordinance pending a final judgment.



Dated: February 19, 2025

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on February 19, 2025, a true and exact copy of the foregoing document was served on Germantown's counsel via email, with the written consent of Germantown's counsel.

/s/ Colin P. McDonell

Colin P. McDonell

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