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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF TULARE**

12 **PLAINTIFFS A-D,**) Case No.
13)
14 Plaintiff,)
15)
16 vs.)
17) **COMPLAINT FOR DAMAGES,**
18) **INJUNCTIVE RELIEF, AND**
19 **CITY OF TULARE, and DOES 1-10,**) **DECLARATORY RELIEF FOR**
20) **VIOLATING 42 U.S.C. §1983; MONELL**
21 Defendants.) **VIOLATION**
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29 **COME NOW PLAINTIFFS A-D,** individuals, and hereinafter referred to as Plaintiffs,
30 and allege on information and belief this complaint for damages, injunctive relief, and
31 declaratory relief against the above named Defendants, for violations of 42 United States Code §
32 1983 et. seq. as follows:

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PARTIES

1. Plaintiffs are residents of the State of California and the City of Tulare, County of Tulare at all times herein relevant. Plaintiffs are over the age of 18.

2. Defendant City of Tulare is a governmental organization, created, authorized and operating under the laws of the State of California. Defendant City of Tulare is subject to the Constitution of the United States, the Constitution of California and the laws thereunder.

3. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1-10 and therefore sues those Defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when the same as been ascertained. Each DOE defendant is responsible in some manner for the acts complained of herein.

JURISDICTION AND VENUE

4. The events that give rise to this Complaint for Damages Injunctive and Declaratory Relief arose and occurred within the geographic boundaries and jurisdiction of the County of Tulare, State of California, unless otherwise noted. Therefore, both jurisdiction and venue lie with this Court.

FACTS COMMON TO ALL CAUSES OF ACTION

5. Plaintiffs live in single-family homes in residential parts of the City of Tulare.

6. Plaintiffs have chosen to support the candidate Matt Darby for the position of District Attorney for the County of Tulare. To that end, Plaintiffs wish to display freestanding yard signs in their front yards. These signs read as follows "Matt DARBY For Tulare County District Attorney".

7. The signs have a political message.

8. Plaintiffs believe that displaying the signs will violate the City of Tulare Municipal Code and thus are being forbidden from displaying the signs.

1 9. On Plaintiffs' behalf, counsel sent a letter addressed to Joe Carlini, City Manager for the
2 City of Tulare and the Tulare City Council. In this letter, Plaintiffs' counsel explained that
3 the ordinance is facially unconstitutional under *Reed v. Town of Gilbert*, 135 U.S. 2218 (2015).
4 See Exhibit "A".

5 10. [Insert response from City]

6 11. To date, the ordinance remains in effect, preventing Plaintiffs from displaying the signs.
7 Plaintiffs continue to wish to display the signs in support of their political candidate of choice,
8 Matt Darby for Tulare County District Attorney.

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10 **THE ORDINANCE**

11 12. The City of Tulare Municipal Code contains the following regulations for temporary
12 political signs:

13 § 10.188.050 Standards by sign type.

14 (J) *Temporary political signs.*

15 (1) Signs shall be placed on lots or parcels privately owned with permission of the
16 property owner.

17 (2) The combined area of sign by any one candidate on any one parcel shall not
18 exceed 32 square feet.

19 (3) Political signs shall not be attached to trees, fence posts, or utility poles,
20 except on private property where signs may be attached to trees and fence posts
21 with permission of the property owner.

22 (4) Political signs shall not be lighted either directly or indirectly.

23 (5) No political sign or portion thereof shall be placed in any street right-of-way
24 or on any city owned property.

25 (6) No sign shall be erected in violation of street corner setback requirements,
26 which are established to ensure traffic safety, nor shall any such sign interfere
27 with pedestrian traffic.
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(7) Political signs shall be erected no more than 60 days prior to the date of the election.

(8) Unless a waiver is granted by the City Council, all political signs shall be removed within 14 days following the date of the election. Signs not removed within this period may be removed by the city and the cost of removal assessed against the candidate.

(9) Provisions of this division shall not apply to political advertising on existing commercial billboard structures, which shall be subject to the general provisions of this chapter.

(10) Maximum sign area: Thirty-two sq. ft.

13. The ordinance further defines size of signs and in cases of conflicting definitions, imposes the more restrictive regulation.

§ 10.188.040 General requirements.

(B) *Area of signs.*

(1) A "Double-Face Sign" with parallel planes, back-to-back, not more than 24 inches apart, shall count as a single sign and only one side shall be counted for the total area.

(2) In cases of multi-face signs other than double-face signs the outer dimensions of all the faces capable of presenting a sign shall be combined. The sign area shall be the total area of all the faces.

(3) In the event a sign falls under more than one sign definition, the more restrictive sign regulations found in this chapter shall apply.

14. The ordinance exempts signs placed by a governmental body or public utility, required to be maintained by law; Memorial tablets or plaques placed by recognized historical agencies; Flags of the National or State Government; and/or Nonelectric signs within recreational facilities, which are not visible from any public street. §10.188.090

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1 15. The ordinance defines “sign” as “any medium, including its structure and component
2 parts, which is used, or intended to be used, to attract attention to the subject matter for
3 advertising purposes and shall include any announcement, declaration, demonstration, display,
4 illustration, insignia, surface or space when erected, painted or maintained in view of the general
5 public for identification, advertisement or the promotion of the interests of any person.”

6 16. The ordinance defines “temporary sign” as “a sign constructed of expendable material
7 such as paper, plastic, cloth, or wood intended to be displayed for a short period of
8 time. Pennants, banners and similar devices are also included in this category.” However, “short
9 period of time” is not defined. Similarly, the terms “flag, banner and pennant” are not defined.

10 17. In an “objectives” section, the Ordinance contains the following:

11 Signs have an obvious impact on the character and quality of the city. As a
12 prominent part of the scenery, they attract or repel the viewing public, affect the
13 safety of vehicular traffic, and sets the tone of the neighborhood. The objectives
14 of this chapter include the following:

- 15 (1) To locate and design signage to identify the general nature of an
16 establishment or to direct attention to a project, activity, place, person,
17 organization or enterprise;
- 18 (2) To avoid visual blight which subjects Tulare residents to excessive
19 competition for their visual attention. As appropriate identification devices, signs
20 must harmonize with the building, the neighborhood, and other signs in the area;
- 21 (3) To encourage the installation of signs that improve the appearance of the
22 building and the neighborhood and to enhance the economic effectiveness of
23 signs;
- 24 (4) To safeguard life, health, property and public welfare by regulating the size,
25 height, structural design, quality of materials, construction location,
26 electrification, illumination and maintenance of all types of signs and sign
27 structures; and
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(5) To provide objective criteria by which a sign can conform to the above intentions of suitability and safety. §10.188.020

18. There is no *mens rea* requirement in the Ordinance.

FIRST CAUSE OF ACTION

42 USC 1983

Violation of First and Fourteenth Amendments of the United States Constitution/

Monell Violation

(By Plaintiffs against Defendant City of Tulare)

19. All of the above Paragraphs are incorporated by reference in this paragraph as if fully set forth herein.

20. Defendant City of Tulare has initiated, adopted, and maintained a policy and practice of denying Plaintiffs and others their rights under the First Amendment to exercise their right to engage in political speech (*Monell*).

21. The Sign Ordinance violates the Free Speech Clause of the First Amendment to the Constitution (as applied through the Fourteenth Amendment) on its face and as applied, because it impermissibly curtails Plaintiffs' free speech rights.

22. The Sign Ordinance is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. The objective of the Sign Ordinance is, in part, to "set the tone of the neighborhood" and to "harmonize the building, the neighborhood, and other signs in the area." Political-content signs are specifically set apart for different restrictions.

23. Because the Sign Ordinance defines regulated speech by its particular subject matter or by its function or purpose, it is subject to strict scrutiny. *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015); *City of Ladue v. Gilleo*, 512 U.S. 43 (1994).

1 24. The City of Tulare has no compelling or significant interest to justify the Sign Ordinance.
2 The “objectives” listed in the Sign Ordinance are neither significant nor compelling.

3 25. The Sign Ordinance is not the least restrictive means to achieve a compelling government
4 interest, nor is it narrowly tailored to achieve a significant government interest.

5 26. Additionally, the Sign Ordinance does not leave open ample alternative avenues of
6 communication for Plaintiffs to convey their message.

7 27. Plaintiffs have been chilled from displaying their political signs because of their reasonable
8 fear of arrest and/or prosecution.

9 28. The Sign Ordinance is also over broad. The Sign Ordinance prohibits lighting of any sign
10 thus limiting the visibility to only daylight hours. It prohibits display of political signs outside the
11 window of 60 days prior to the date of “the election” and 14 days after “the election”. “The
12 election” is not defined. Additionally, the Sign Ordinance prohibits all temporary political signs
13 from being displayed more than 90 days per year. The Sign Ordinance prohibits too much
14 protected speech. *City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994).

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16 **SECOND CAUSE OF ACTION**

17 **42 USC 1983**

18 **Violation of Due Process- Fourteenth Amendment of the United States Constitution/**

19 **Monell Violation**

20 (By Plaintiffs against Defendant City of Tulare)

21 29. All of the above Paragraphs are incorporated by reference in this paragraph as if fully set
22 forth herein.

23 30. The Sign Ordinance is unconstitutionally vague on its face and thereby violates Plaintiffs’
24 right to due process under the Fourteenth Amendment to the U.S. Constitution.

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1 31. The Sign Ordinance does not define “short period of time” for temporary signs; fails to
2 define “political sign”; fails to define “flags of the National or State Government”. The Sign
3 Ordinance fails to define terms which would lead an ordinary person to understand what conduct
4 is prohibited. Additionally, the Sign Ordinance is so lacking in sufficient definiteness that an
5 ordinary person cannot understand what conduct is prohibited.

6 32. The Sign Ordinance also encourages arbitrary and discriminatory enforcement. For
7 example, the Sign Ordinance would apply to lawn “flags” displayed throughout the year,
8 celebrating Christian Holidays such as Easter, and Christmas, as well as Christmas lights and
9 illuminated lawn ornaments (Creche/ Nativity scenes). On information and belief, the City of
10 Tulare has not enforced the Sign Ordinance against parcels displaying these items.

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12 **REQUEST FOR RELIEF**

13 33. WHEREFORE, Plaintiffs request judgment against Defendants and each of them as
14 follows:

- 15 a) Upon motion, grant a preliminary injunction preventing the enforcement of the
16 Sign Ordinance;
- 17 b) Grant a permanent injunction preventing the enforcement of the Sign Ordinance;
- 18 c) Enter a declaration that the Sign Ordinance is unconstitutional on its face and as
19 applied to Plaintiffs;
- 20 d) Award Plaintiffs general damages according to proof on each cause of action for
21 which such damages are available;
- 22 e) Award reasonable attorney’s fees pursuant to 42 USC § 1988;
- 23 f) Award costs of suit incurred herein;
- 24 g) For such other and further relief the Court deems just and proper.

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Dated: _____

LAW OFFICES OF MELO AND SARFIELD LLP

Marguerite Melo, Esq.
Attorney for Plaintiffs

Dated: _____

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Attorney for Plaintiff