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VIA U.S. MAIL AND EMAIL

City of Luthersville
c/o Mayor Donald Cuttie
104 Wortham Road
Luthersville, GA 30251
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c/o City Attorney Danielle Sewell
19 Perry St. Suite 201
Newnan, GA
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RE: Unconstitutionality of Luthersville Ordinance No. 2001-07, § 13.12

Dear Mayor Cuttie and Ms. Sewell:

This firm represents Menlia Moss Trammell and Robert T. Trammell, Jr., in connection with the City of Luthersville's efforts to enforce Ordinance No. 2001-07 § 13.12(5), which restricts the placement of political signs on private property. We write to demand that the City immediately suspend enforcement of the ordinance and begin the process of either rescinding it or amending it to comply with the United States and Georgia Constitutions.

Mr. Trammell has represented the residents of Georgia's 132nd district since November 2014, and he currently serves as the minority leader in the Georgia House of Representatives. This year, Mr. Trammell seeks re-election to continue serving the residents of this community. Both Mr. Trammell and his mother Menlia have posted political signs supporting his re-election campaign in the yards of their homes, as well as on a piece of property that they run together as a bed and breakfast.

On June 26, 17 days after the June 9 primary, Mrs. Trammell noticed that the campaign sign she had posted at the bed-and-breakfast property was gone. After making inquiries with members of the Luthersville City Council, Mrs. Trammell spoke with Mayor Cuttie about the sign. He confirmed that the City had removed the sign because it violated the City's sign ordinance, which requires all political signs to be taken down within 10 days of an election. Ord. No. 2001-07 § 13.12(5)(a) & (i). In addition to their sign, the Trammells understand that the City has also improperly removed a number of other political signs expressing a diverse range of

viewpoints, including signs supporting President Trump and Mr. Trammell's opponent in the general election in November.

Mayor Cuttie also told Mrs. Trammell that the campaign signs in her yard and in Mr. Trammell's yard must be taken down or the City would forcibly remove them. On July 1, Mr. Trammell received a phone call from the Luthersville City Clerk, who reiterated Mayor Cuttie's and the City's demand that the signs be removed.

Both Mr. Trammell and Mrs. Trammell have attempted to explain to the City that its restrictions on political signs and its removal of such signs from private property are unconstitutional. But the City has persisted in its efforts to enforce the sign ordinance. Accordingly, in hopes of reaching an amicable resolution of this issue, this letter provides additional detail regarding the ways in which Ordinance No. 2001-07 § 13.12 violates the United States and Georgia Constitutions and exposes the City and its officials to litigation risk if they attempt to enforce it.

The First Amendment Prohibits Content-Based Restriction of Yard Signs

Under the First Amendment to the U.S. Constitution, the U.S. Supreme Court has struck down sign ordinances nearly identical to Luthersville's . For example, in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), the Supreme Court considered an ordinance that prohibited the display of outdoor signs without a permit, with an exemption for certain categories of signs. The exempted signs included political signs, though these were only allowed to be displayed "up to 60 days before a primary election and up to 15 days following a general election." *Id.* at 160. The Supreme Court determined that the sign ordinance was a content-based restriction because it distinguished between signs based on the message they communicated. *Id.* at 164. As a result, the Court applied strict-scrutiny review under the First Amendment, meaning that the ordinance was "presumptively unconstitutional and may be justified only if the government proves that [the ordinance was] narrowly tailored to serve compelling state interests." *Id.* at 163.

Strict-scrutiny review is a high hurdle for any municipality to clear. In *Reed*, the town argued that its sign ordinance was necessary to preserve the town's aesthetic appeal and to ensure traffic safety. But the Supreme Court rejected this argument, holding that even if those alleged interests were compelling—a fact which the Court did not concede—the ordinance's restrictions were not narrowly tailored and were instead hopelessly underinclusive. The Court thus struck down the law under the First Amendment. *Id.* at 172.

While in *Reed* the Supreme Court left open the question of whether governmental interests in aesthetic appeal and traffic safety qualify as compelling, it is notable that ***no court*** has ever held those interests would justify a content-based restriction on signage like Luthersville's. *See Thomas v. Bright*, 937 F.3d 721, 733 (6th Cir. 2019) ("[N]o court has ever found public aesthetics to be a *compelling* interest, and [the state] presents no persuasive arguments for finding that it is."); *Whitton v. City of Gladstone, Mo.*, 54 F.3d 1400, 1408 (8th

Cir. 1995) ("[A] municipality's asserted interests in traffic safety and aesthetics, while significant, have never been held to be compelling."); *McCormack v. Twp. of Clinton*, 872 F. Supp. 1320, 1325 (D.N.J. 1994) ("[W]hile courts certainly have recognized states' and municipalities' interests in aesthetics and safety, no court has ever held that these interests form a compelling justification for a content-based restriction of political speech."). And in fact, the Eleventh Circuit Court of Appeals—the federal court of appeals with jurisdiction over Luthersville—has affirmatively held that aesthetics and traffic control are ***not*** compelling under the First Amendment. *Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1570 (11th Cir. 1993) ("The deleterious effect of graphic communication upon visual aesthetics and traffic safety . . . is not a compelling state interest of the sort required to justify content-based regulation of noncommercial speech.")

Likewise, numerous state and federal courts have held that durational limits on political signs, such as those imposed by Luthersville's sign ordinance, are unconstitutional. *E.g.*, *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005) (striking down ordinance exempting political signs from permit requirement only during period 14 days prior to election and two days after); *Dimas v. City of Warren*, 939 F. Supp. 554, 556-57 (E.D. Mich. 1996) (striking down ordinance banning political signs except those posted between 45 days prior to an election and seven days after); *Painesville Bldg. Dep't v. Dworken & Bernstein Co., L.P.A.*, 733 N.E.2d 1152, 1160 (Ohio 2000) (striking down ordinance banning political signs except those posted between 17 days prior to an election and two days after); *Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc.*, 266 Ga. 393, 396 (1996) (striking down ordinance prohibiting political signs except for six weeks prior to an election and two weeks after). Courts have also consistently struck down restrictions on the number of political signs a resident may post, like the restriction imposed by § 13.12(5)(b) of Luthersville's ordinance. *E.g.*, *Dimas*, 939 F. Supp. at 557 (striking down ordinance that limited residents to one political sign per candidate); *Arlington Cty. Republican Comm. v. Arlington Cty., Va.*, 983 F.2d 587, 595 (4th Cir. 1993) (striking down ordinance limiting residents to two political signs per property).

Luthersville's Sign Ordinance Violates the First Amendment

Luthersville's Ordinance No. 2001-07, § 13.12(5) is a content-based restriction because it imposes different rules for signs based solely on their content. The law's subsection headings—"Political sign[s]," "Construction sign[s]," and "Home improvement signs"—make the point obvious.[1] While the ordinance's restrictions apply equally whether a political sign supports a Republican candidate or a Democratic candidate, the fact that a political sign is treated

[1] This letter focuses on the restriction of political signs in § 13.12(5), both because the Trammells' signs fall into this category and because political speech is "at the core of what the First Amendment is designed to protect." *Virginia v. Black*, 538 U.S. 343, 365 (2003). However, the entirety of § 13.12—as well as many other parts of Article 13 of the City Code—is unconstitutional under the same analysis that invalidates § 13.12(5).

differently than, for example, a real estate sign means that the ordinance is subject to strict scrutiny.

Luthersville has no compelling interest that would justify these content-based restrictions. The ordinance's preamble states that the City regulates signs in order "to encourage the effective use of signs as a means of communication in the city; to maintain and enhance the aesthetic environment and the city's ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign restrictions." Ord. No. 2001-07, § 13.1. But these interests are not compelling. *Dimmitt*, 985 F.2d at 1570.

Further, even assuming that the City's interests were somehow compelling, the ordinance would still fail a strict-scrutiny review because it is not narrowly tailored to meet those interests. *See Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267 (11th Cir. 2005) ("[T]he sign code recites only the general purposes of aesthetics and traffic safety, offering no reason for applying its requirements to some types of signs but not others."). For example, there is no aesthetic or traffic-control reason why real-estate signs may remain posted indefinitely, but political signs may only be posted during a 40-day window. *Compare* Ord. No. 2001-07, § 13.9(6) *with id.* § 13.12(5)(a). Nor is there any reason why a resident may post multiple political signs for different candidates, but not two signs for the same candidate. Ord. No. 2001-07 § 13.12(5)(b). And the ordinance provides no reason why it apparently imposes a blanket ban on signs that are specific to certain political issues, even though such signs would have exactly the same effect on aesthetics and traffic as a campaign sign.

Both because the City's stated interests are not compelling and because the ordinance is not narrowly tailored to meet those interests, Luthersville's sign ordinance violates the First Amendment. This violation is one that the City should take very seriously, as it chills political speech on both sides of the aisle, Democrat and Republican. The First Amendment guarantees that citizens have the right to speak freely, particularly in matters of politics. The City cannot abridge its residents' free speech and must instead immediately cease enforcing its sign ordinance and either repeal it or replace it with an ordinance that complies with the First Amendment.

Section 13.12(5)(i) Raises Constitutional Questions Under the Takings Clause

While all parts of § 13.12(5) are invalid under the First Amendment, subsections (5)(h) and (5)(i) of the ordinance raise additional constitutional questions because they allow City officials to intrude on residents' land in order to take their personal property. Specifically, § 13.12(5)(h) provides that the City is "empowered to remove . . . without notice" any political sign that does not comply with the rules. Section 13.12(5)(i) also states that if a political sign remains posted more than 10 days after an election, the City may remove the sign from private property.

The City has already exercised its powers under these provisions by removing a sign posted on Mr. Trammell's bed-and-breakfast property—and it did so without ever notifying Mr. Trammell or asking him to remove the sign himself. Mrs. Trammell has asked the City to return that sign, which even under the existing ordinance could be reposted ahead of the November 2020 election. The City has not responded to Mrs. Trammell's requests, leaving her to presume that the City has destroyed the sign.

Entering private property without notice in order to remove political signs owned by residents, and then destroying those signs without compensation, raises serious questions under the takings clause of the Fifth Amendment. That clause provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const., amend. V. As the Ninth Circuit Court of Appeals has explained, where—as here—the government removes private property without a "legitimate public purpose," such conduct violates the takings clause. *Schneider v. Cty. of San Diego*, 145 F.3d 1340 (9th Cir. 1998). Enforcing an unconstitutional sign ordinance is undoubtedly not a legitimate public purpose.

* * *

We ask that the City agree in writing to immediately cease enforcement of § 13.12(5) and either to repeal the ordinance or swiftly amend it to comply with the United States and Georgia Constitutions. Due to the gravity of these constitutional violations and the time-sensitive nature of these issues, we ask that you comply with this demand by July 10, 2020.

We hope that the City will voluntarily correct the constitutional problems with its sign ordinance. However, if the City does not comply with this demand or otherwise persists in enforcing § 13.12(5), our clients will pursue legal action to invalidate the ordinance. If they are forced to pursue their claims in court, they will seek recovery of all of their damages and attorneys' fees.

We appreciate your prompt attention to this matter, and we look forward to your response by July 10, 2020. In the meantime, our clients reserve all of their rights against the City and its officials.

With best regards,

Sarah Brewerton-Palmer

SBP/wvb

cc: Jarred Klorfein, Esq. (by email PDF only)