

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH P. RUDOLPH, M.D.,

Plaintiff,

CASE NO.: 2:08-cv-334

v.

TOWNSHIP OF SOUTH PARK,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF
JOSEPH P. RUDOLPH'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

The Defendant in this action -- Township of South Park ("South Park" or "Township") -- has enacted Ordinance #556, Article XXII, Subsection 2203.7 of the South Park Code, which imposes a year round ban on political campaign signs on all properties, including private property, with the exception of the thirty days prior to and the five days after a primary or general election. Under the Supreme Court's decision in City of Ladue v. Gilleo, 512 U.S. 43 (1994), and subsequent cases, this provision is an unconstitutional restraint on free speech protected by the First Amendment to the United States Constitution. To compound the constitutional violation, Subsection 2203.7 also applies Chapter 111 of the South Park Code, which normally only applies to signs in public right of ways, to all political signs, including those on private property. Chapter 111 requires that in order to post any political sign in South Park Township, the resident must post a \$25 bond and register with the Township as to the content of the sign and its removal date, and will forfeit the bond if removal of the sign is untimely. These provisions are also overbroad, content-based unconstitutional restrictions on political speech.

Pursuant to these provisions of the South Park Code, Plaintiff Joseph P. Rudolph, M.D. ("Dr. Rudolph"), who resides and owns property in South Park, was prevented from displaying a political campaign sign on his own property more than thirty-days in advance of the April 2007 election. Specifically, South Park informed him that unless he complied with the applicable ordinances he would be subject to a fine of up to \$500 per day, plus court costs and attorneys fees. He now wishes to display a political campaign sign in anticipation of Pennsylvania's April 22, 2008 primary election, but has not done so for fear of the applicable fines. Accordingly, Dr. Rudolph is seeking to vindicate his First Amendment right to engage in free speech by challenging, both facially and as applied, the constitutionality of South Park's political sign

ordinances. Dr. Rudolph, through his motion, is requesting an immediate order enjoining South Park from enforcing the ordinances in question pending final resolution of the case.

II. RELEVANT FACTS

As explained in Dr. Rudolph's Verified Complaint, which is incorporated herein by reference, Ordinance # 556, Article XXII of the South Park Code regulates all signs in South Park Township.¹ The Ordinance is divided into six main sections – Section 2201 containing definitions, Sections 2202 and 2203 regulating signs in all zones, Section 2204 regulating certain types of signs in residential zones, Section 2205 regulating certain types of signs in business/commercial or industrial zones, and Section 2206 regulating billboards.

Within Section 2203, regulating signs in all zones, is Subsection 2203.7, which is entitled "Political Signs." Subsection 2203.7 applies to all political signs regardless of location, including signs on private property. This Subsection only permits political signs to be displayed for a maximum of seventy days a year (35 days each for a primary and general election), and other than that, a homeowner cannot place political signs on his or her property. This restriction is based solely on the content of the sign, on the basis that it has a political message. In contrast, it does not appear that there is anything in Ordinance #556 that would prevent a homeowner from placing a sign on his or her property that states "I love cats" or "no trespassing" all year round. Cf., e.g., Subsection 2202.5 (regulating the size of legal notification signs, but imposing no temporal restrictions). In addition, although there are some limits on commercial signs, they are not nearly as restrictive as those on political signs. For example, a real estate sign can be up all year long, and the only temporal restriction is that it must be removed within 30 days of the sale or rental of the property on which it is located. See Subsections 2203.2, 2202.4.

¹ The Ordinance is attached as Exhibit A to the Verified Complaint.

The South Park Township Code also has a bond and registration requirement that is imposed on political signs on private property, through Subsection 2203.7, but otherwise is only imposed on signs in a public right of way. This states that individuals must post a cash bond in the amount of \$25 with the Township, and submit a form describing the name and address of the person placing the sign, the nature and purpose of the sign, and the date when the sign will be removed. See Subsections 2203.7, 111.2 and 111.3. The bond paid is forfeited if the political lawn sign is not removed within fifteen days after an election. See Subsection 2203.7 (requiring that sign be removed within 5 days after election); Subsection 111.4 (forfeiting of bond if sign is not removed within 10 days of the stated removal date).

III. ANALYSIS

Under Federal Rule of Civil Procedure 65, this Court must weigh four factors when deciding whether to grant a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably harmed absent the injunction; (3) whether the harm to the movant absent the injunction will be greater than the harm to the non-moving party if the injunction is granted; and (4) whether the injunction will serve the public interest. See, e.g., McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC, 511 F.3d 350, 356-57 (3d Cir. 2007). In this First Amendment case, South Park carries the burden of proof and persuasion (not the Plaintiff), and must demonstrate that its ordinance meets the constitutional standard. U.S. v. Playboy Entm't Group, Inc., 529 U.S. 803, 816 (2000) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.”); Phillips v. Borough of Keyport, 107 F.3d 164, 173 (3d Cir. 1997) (“When an ordinance burdening speech is thus challenged, it must be ‘justified’ by the state. . . . It is the Borough that carries the burdens of production and persuasion here, not the plaintiffs.”). Because this is a First-Amendment case in which

irreparable harm is presumed and the rights sought to be vindicated receive special protection under the law, South Park cannot meet its burden, and the balance of the four factors weigh sharply in favor of granting the requested preliminary injunction.

A. Plaintiff Is Likely To Prevail On The Merits Of His First Amendment Claim.

The First Amendment to the United States Constitution provides: “Congress shall make no law . . . abridging the freedom of speech, or of the press” The Fourteenth Amendment makes this limitation applicable to the states and their political subdivisions. City of Ladue v. Gilleo, 512 U.S. 43, 45 n.1 (1994). An analysis of any potential First Amendment violation generally begins with whether the restriction in question is content-neutral, or content-based, in order to determine the proper test for constitutionality. City of Ladue, 512 U.S. at 58 (the “normal inquiry our doctrine dictates is, first, to determine whether a regulation is content based or content neutral, and then, based on the answer to that question, to apply the proper level of scrutiny”) (O’Conner, J. concurring). Here, South Park’s decision to ban political speech for most of the year and impose a bond and registration requirement on any such speech is content-based, and cannot survive strict scrutiny. Nonetheless, even were this Court to find the ordinances in question content-neutral, they are not narrowly drawn to advance a significant government interest, restrict an irreplaceable form of communication, and are clearly unconstitutional.

1. South Park’s Content-Based Political Sign Ordinance Is A Ban On Speech That Cannot Withstand Strict Scrutiny.

“A state or municipal law is content-neutral if it regulates ‘without reference to the content of the regulated speech’” McCormack v. Twp. of Clinton, 872 F. Supp. 1320, 1323 (D. N.J. 1994); see also City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429 (1993) (same). Courts within this circuit addressing bans on political signs that permit such signs only

for a certain number of days before and after an election have held that they are not content neutral because they “specifically limit[] signs advertising political events or viewpoints” and treat them differently than signs with other content. McCormack, 872 F. Supp. at 1323-24; Bella Vista United v. City of Phila., No. 04-1014, 2004 WL 825311, **5-6 (E.D. Pa. Apr. 15, 2004) (ordinance which mandates fine for each political campaign poster remaining posted 30 days after election was content-based restriction of speech); Warms v. Springfield Twp., No. 94-6610, 1994 WL 613660, at **1-2 (E.D. Pa. Nov. 1, 1994) (ordinance banning political signs except during a fifteen day period prior to election was a “content based” restriction); Loftus v. Twp. of Lawrence Park, 764 F. Supp. 354, 360-61 (W.D. Pa. 1991) (ordinance banning all signs in residential district except for real estate and garage sale signs was not content-neutral). Courts in other jurisdictions examining similar restrictions on political signs on private property have also uniformly held them to be unconstitutional content-based laws.²

² See, e.g., Whitton v. City of Gladstone, 54 F.3d 1400, 1403-04 (8th Cir. 1995) (holding that ordinance prohibiting a commercial or residential owner from placing a political sign on property more than 30 days prior to an election or 7 days after was a content based restriction because it only applied to political signs); Fehribach v. City of Troy, 341 F. Supp. 2d 727, 732-33 (E.D. Mich. 2004) (ordinance restricting political signs to only 30 days before election and only two per yard was likely to be an unconstitutional content-based restriction); Sugarman v. Village of Chester, 192 F. Supp. 2d 282, 296, 298-300 (S.D.N.Y. 2002) (Warwick, Goshen and Walkill ordinances restricting political signs to only a certain number of days prior to an election, and New Windsor ordinance requiring permit to post election sign more than 45 days prior to an election, are content based restriction because they imposes additional regulations on political signs); Knoeffler v. Town of Mamakating, 87 F. Supp. 2d 322, 332 (S.D.N.Y. 2000) (ordinance only permitting political signs 15 days before and after an election, and requiring a permit for larger political signs, was a content based regulation subject to strict scrutiny because it singled out political speech for special treatment); N. Olmsted Chamber of Commerce v. City of N. Olmsted, 86 F. Supp. 2d 755, 767 (N.D. Ohio 2000) (ordinance that regulated residential signs and exempted political signs only if removed within 10 days after the election was a content based restriction entitled to strict scrutiny); Outdoor Sys., Inc. v. City of Merriam, Kansas, 67 F. Supp. 2d 1258, 1262, 1264, 1267 (D. Kan. 1999) (holding that where ordinance restricted political signs to only 25 days before and 5 days after an election, this was a content based restriction and could not survive strict scrutiny); Dimas v. City of Warren, 939 F. Supp. 554, 557 (E.D. Mich. 1996) (ordinance only permitting political signs 45 days before and a week after elections was a content based regulation because it imposes temporal restrictions upon political signs not imposed on other commercial signs); City of Antioch v. Candidates’ Outdoor Graphic Serv., 557 F. Supp. 52, 55-61 (N.D. Cal. 1982) (holding that ordinance that only permitted political signs 60 days a year was subject to strict scrutiny because it singled out political signs for special treatment); Orazio v. Town of North Hempstead, 426 F. Supp. 1144, 1148-49 (E.D.N.Y. 1977) (ordinance that prohibited political wall signs more than six weeks before an election was a content-based restriction that could not survive strict scrutiny); cf. Beaulieu v. City of Alabaster, 338 F. Supp. 2d 1268, 1276-78 (N.D. Ala. 2004) (ordinance that permitted political signs on residential property but prohibited them elsewhere was a content-based restriction that could not survive strict scrutiny).

Here, the provision in question, Subsection 2203.7, is specifically entitled “political signs” and imposes a nearly year-long ban only on those signs. As discussed in the fact section, supra, under South Park’s regulatory scheme a property owner could post certain signs with non-political content – such as a “no trespassing sign,” all year round without any temporal restrictions. See Subsection 2202.5. Or, an individual with a real estate “for sale” sign could potentially leave that sign up for many years, and only need remove it thirty days after the completion of the sale. See Subsections 2202.4, 2203.2. In contrast, political signs are banned from Dr. Rudolph’s lawn almost all year, with only a seventy day exception. Thus, South Park’s political sign ordinance is content-based.

Content-based restrictions, especially those regulating “private citizens on private property,” are “presumptively impermissible and this presumption is a very strong one.” City of Ladue, 513 U.S. at 59 (O’Conner, J. concurring); see also Rosenberger v. Rectors & Visitors of U.V.A., 515 U.S. 819, 828 (1995) (discrimination against speech because of content “presumed” unconstitutional); Simon & Shuster, Inc. v. Members of the N.Y. Crime Victims Bd., 502 U.S. 105, 115 (1991) (content-based restrictions are “presumptively unconstitutional”). Under the strict scrutiny imposed on content-based restrictions, the court examines whether the “regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 45 (1983) (emphasis added); see also Loftus v. Twp. of Lawrence Park, 764 F. Supp. 354, 360 n.7 (W.D. Pa. 1991) (noting that strict scrutiny applies to regulation of speech on one’s own private property which, if anything, is deserving of more constitutional protection than public property). Subsection 2203.7 effectively imposes a year round ban on political speech on private property which is

suspended for thirty-five days around the primary and general elections.³ The South Park sign ordinance does not state any interest that South Park is seeking to advance by imposing its temporal ban. However, other localities seeking to defend almost identical ordinances have come up with only two interests for such ordinances -- aesthetics and/or traffic safety issues. The localities argue that such restrictions are necessary so that the area is not so cluttered by political signs as to render it unappealing, and that drivers not be distracted by too many signs. Every court in this circuit to address these concerns has held that they are not “compelling” governmental interests. See Loftus, 764 F. Supp. at 361 (“[W]e doubt that aesthetics or residential quietude is sufficiently compelling to ever justify a content-based restriction . . . on freedom of expression”); Warmes, 1994 WL 613660, at *2 (holding that, in the context of a temporal ban on political yard signs, “aesthetic and traffic safety . . . are not compelling interests”); McCormack, 872 F. Supp. at 1325 n. 2 (noting that no court has ever held aesthetics to be a compelling government interest).⁴ In addition, even if they were compelling interests, the almost year round ban on political signs throughout the township is not narrowly tailored to those interests, since there is no reason why political campaign signs are less aesthetically

³ This is the way other courts have understood almost identical political sign ordinances. See, e.g., Dimas, 939 F. Supp. at 556-57 (political sign ordinance “in effect, imposes a year-round ban on political sign posting. The ban is temporarily suspended for forty-five days prior to an election and is reinstated one week after the election has taken place”); City of Antioch, 557 F. Supp. at 55 (ordinance “imposes a year-round ban on political signs which is temporarily suspended 60 days before election and reinstated after the election has taken place”); Curry v. Prince George’s County, Maryland, 33 F. Supp. 2d 447, 455 (D. Md. 1999) (“extended durational bans on political speech for all but 45 days before and 10 days after a political election, are bans nonetheless”).

⁴ The same is true in other circuits. See, e.g., Whitton, 54 F.3d at 1409 (holding that temporal restriction on political signs was unconstitutional and not justified by traffic safety or aesthetics); Orazio, 426 F. Supp. at 1148 (rejecting aesthetics as basis to limit to restrict political wall signs to just six weeks before an election); City of Antioch, 557 F. Supp. at 59 (rejecting aesthetics as basis for ban on political signs for all but 60 days prior to an election); Outdoor Systems, 67 F. Supp. 2d at 1267-69 (holding that there was no aesthetic or traffic safety difference between a “vote for Joe” sign which was restricted to 30 days and “Joe’s Pizza” sign which was permanent – therefore the ordinance restricting the former was unconstitutional); Fehribach, 341 F. Supp. 2d at 733 (safety and aesthetics were not compelling interests for limits on political lawn signs and were not narrowly tailored); Knoeffler, 87 F. Supp. 2d at 332-3 (safety and aesthetics could not justify durational limits on political signs); Sugarman, 192 F. Supp. 2d at 296, 298 (same); Beaulieu, 338 F. Supp. 2d at 1277 (same); Dimas, 939 F. Supp. at 557 (same).

pleasing than any other sort of sign, or cause more distraction than any other sort of sign. See Loftus, 764 F. Supp. at 361 (“It would be ludicrous to suggest that a temporary for sale sign is more aesthetically pleasing than a political sign” and explaining that the township cannot target certain types of speech with the goal of reducing the number of signs overall, particularly where it “singles out for discrimination a most important category of protected expression: political speech”); McCormack, 872 F. Supp. at 1325 (explaining that it is illogical to restrict political signs and not similarly restrict other signs which would be equally problematic aesthetically or distracting for traffic).⁵ Accordingly, South Park’s sign ordinance, Subsection 2203.7 is a content-based restriction on speech that violates the First Amendment.

2. Even If It Were Considered Content-Neutral, South Park’s Temporal Ban On Political Signs Is Still Unconstitutional Because It Limits The Availability of A Key Means of Communication.

A content-neutral regulation of speech is constitutional only if it is “narrowly tailored to serve a significant government interest” and leaves open “ample alternate channels of communication.” United States v. Grace, 461 U.S. 171, 177 (1983). Although the South Park ordinance imposing a political ban is content-based, even if it were content-neutral, this Court would have to strike it down because it is not narrowly drawn to serve a significant interest, and due to the central role of political lawn signs in our democracy, restricting such signs does not leave open ample alternative channels of communication. City of Ladue, 512 U.S. at 55-58.

In City of Ladue, the ordinance in question prohibited political signs on residential property, as well as other residential signs falling outside certain enumerated categories. The City of Ladue explained that its rationale for the ordinance was to prohibit a proliferation of signs that would “create ugliness, visual blight and clutter, tarnish the natural beauty of the

⁵ See also Discovery Network, 507 U.S. at 425 (“The city has asserted an interest in esthetics, but respondent publishers’ [commercial] newsracks are no greater an eyesore than the [non-commercial] newsracks . . . Each newsrack, whether containing ‘newspapers’ or ‘commercial handbills,’ is equally unattractive”)

landscape, as well as the residential and commercial architecture, impair property values, substantially impinge upon the privacy and special ambiance of the community and [] cause safety and traffic hazards to motorist pedestrians and children.” Id. at 47. The Supreme Court held that it need not decide whether the restriction in question was content based or content neutral, because it was unconstitutional under either standard. Id. at 56. The Court held that the ordinance unduly constricted the opportunities for free expression, particularly with respect to political speech, and no “adequate substitutes exist for the important medium of speech that Ladue has closed off.” Id. at 56. The Court explained:

Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident’s support for particular candidates, parties or causes. . . . Displaying a sign from one’s own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. . . . Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. . . . Furthermore, a person who puts up a sign at her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means. . . . Most Americans would be understandably dismayed . . . to learn that it was illegal to display from their window an 8- by 11-inch sign expressing their political views.

Id. at 54, 56, 57. Thus, the court concluded that that there was no adequate substitute for being able to post a political sign in one’s yard or window, and that such prohibition violated the First Amendment. The same is true here.

Even if somehow deemed content neutral, South Park’s prohibition on political signs on a resident’s private property for almost ten months out of the year is unconstitutional. Virtually every other court to address a similar ban has so held. See, e.g., Curry, 33 F. Supp. 2d at 455 (holding political sign ordinance was unconstitutional because “extended durational bans on political speech for all but 45 days before and 10 days after a political election, are bans

nonetheless – inconsistent with the ‘venerable’ status that the Supreme Court has accorded to individual speech emanating from an individual’s private residence”).⁶

Moreover, as recognized by the Supreme Court in City of Ladue, a professed concern for “aesthetics” is not even an interest reasonably related to a ban on political residential signs because:

individual residents themselves have strong incentives to keep their own property values up and prevent “visual clutter” in their own yards and neighborhoods – incentives markedly different from those of persons who erect signs on others’ land, in others’ neighborhoods or on public property. We are confident that more temperate measures could in large part satisfy Ladue’s stated regulatory needs without harm to the First Amendment rights of its citizens.

Id. at 58-59. Likewise, any purported interest by South Park in aesthetics and preventing visual clutter is insufficiently related to its ordinance, even if the restriction is deemed content neutral, and the ban must be declared unconstitutional.

3. South Park’s Cash Bond And Registration Requirement For Political Lawn Signs Is Also An Unconstitutional Restriction On Speech.

The cash bond and registration requirement in Chapter 111 imposed on political signs on private property, but no other private-property signs, is also a content-based restriction on speech that is unconstitutional. See, e.g., Sugarman, 192 F. Supp. 2d at 296 (New Windsor ordinance requiring permit to post election sign more than 45 days prior to an election is a content based restriction because it imposes additional regulations only on political signs and thus it cannot pass strict scrutiny); Curry, 33 F. Supp. 2d at 455 (holding that permit and fee requirement imposed upon campaign signs posted at a private residence were unconstitutional). The bond paid is forfeited if the political sign is not removed within fifteen days after an election. See

⁶ See also cases cited at pp. 5-8 supra.

Subsection 2203.7 (requiring that sign be removed within 5 days after election); Subsection 111.4 (forfeiting of bond if sign is not removed within 10 days of the stated removal date).⁷

Unlike situations where a city can require a permit for a parade or similar event without violating the First Amendment in order to collect fees that fairly reflect the costs incurred by the city, there are no expenses to defray for posting or maintaining a campaign sign on private property. See Curry, 33 F. Supp. 2d at 455. The only interest that arguably could be advanced by this requirement is to add an extra level of enforcement to the temporal ban on political signs, but as discussed above, that ban itself is unconstitutional. Thus, there does not appear to be any compelling, or even significant, government interest advanced by the bond and registration requirement that South Park imposes on political signs on private property. In addition, the fact that the bond amount at issue is a small one does not change the analysis. See Forsyth County v. Nationalist Movement, 505 U.S. 123, 136 (1992) (“A tax based on the content of the speech does not become more constitutional because it is a small tax.”).

The Supreme Court recognized in City of Ladue that political lawn signs are so valuable precisely because they are an “unusually cheap and convenient form of communication.” 512 U.S. at 57. Bond and registration requirements increase the cost and decrease the convenience of this form of communication. As such, South Park’s bond and registration requirement imposed on all political signs is overbroad, impermissibly chilling speech, and is thus unconstitutional.

⁷ The Third Circuit has found permit ordinances to be content-neutral and has upheld them where “there is no commercial speech that is allowed where similar noncommercial speech is not.” Riel v. City of Bradford, 485 F.3d 736, 741-42, 750, 752 & n.8 (3d Cir. 2007) (approving a permitting requirement that contained an exemption for noncommercial speech on private property, and noting that because political signs on private property were exempted, the concerns of the Supreme Court in City of Ladue were not implicated). Here, South Park is treating commercial speech more favorably than political speech by imposing the bond and registration requirements of Chapter 111 on only political signs, and no other types of signs, on private property.

See, e.g., Curry, 33 F. Supp. at 455 (holding permit requirement for political lawn signs was unconstitutional); Sugarman, 192 F. Supp. 2d at 296 (same).

B. Plaintiff Will Be Irreparably Harmed Unless The Injunction is Granted.

In 2007 when Dr. Rudolph attempted to post a political sign on his lawn more than 30-days before the election, he was forced to take it down under threat of fines of up to \$500 dollars per day plus attorneys fees. South Park has explicitly stated that it considers its ordinance constitutional and intends to continue enforcing it. Without this injunction, Plaintiff will continue to be deprived of his First Amendment right to engage in political speech on his own property through the display of a political sign until the next thirty-five-day suspension of South Park's ban. Until (and after) that time, Plaintiff will be unable to affix a simple sign to his own front yard in support of, or opposition to, a political candidate, for fear that the sign will be removed and he will be fined. Plaintiff's ability to exercise his core First Amendment freedom of political expression, and to participate in public political debate, is being and will continue to be severely curtailed. As the Supreme Court has stated, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373-74 (1976) (suggesting that the court of appeals might properly have held that the district court abused its discretion in denying preliminary injunctive relief); see also Swartzwelder v. McNeilly, 297 F.3d 228, 241-42 (3d Cir. 2002) (quoting Elrod and affirming grant of preliminary injunction based on alleged violation of free speech).

C. Defendant Will Suffer No Irreparable Harm If The Injunction Is Granted.

South Park has no legally-cognizable interest in suppressing free speech protected by the First Amendment, and this case does not implicate South Park's authority to regulate signs that pose an imminent danger to public safety, such as a sign that obstructs a drivers' line of sight.

Granting Plaintiff's requested injunction will not cause any foreseeable harm to South Park. Certainly, the balance of harms favors granting Plaintiff injunctive relief from South Park's restraint of his constitutional rights.⁸

D. Granting the Injunction Will Serve the Public Interest.

Free political exchange is a public interest that is at the core of our society and our laws. In light of the upcoming primary election on April 22, 2008, the general public, and particularly the citizens of the Township of South Park, have an acute need for a free exchange of ideas in the form of political campaign signs. Both candidates and voters suffer when the government bans a central and traditionally protected method of expressing one's political views and affiliations. Such a ban not only harms those who would post political signs, but also deprives any citizen of an easily accessible source of information about the views of neighbors and the community at large. As the Supreme Court recognized in City of Ladue, there exists no real substitute for the role that political signs play in American politics, and lifting a ban on their use can only serve the public interest. City of Ladue, 512 U.S. at 56-57.

Courts within the Third Circuit that have reviewed political sign ordinances with temporal bans similar to the one at issue here have agreed with the analysis laid out above and granted the preliminary injunction. See, e.g., Warms, 1994 WL 613660 at **1-2; McCormack, 872 F. Supp. at 1328; Bella Vista United, 2004 WL 825311 at **5-6, *11; Benson v. Harborcreek Twp., No. 02-cv-00303, slip. op. (W.D. Pa. Oct. 9, 2002).

⁸ In addition, because the balance of the equities weigh overwhelmingly in favor of the Plaintiff and , and no costs will be suffered by South Park in the event it is found to be wrongfully enjoined, the Rule 65(c) bond requirement should be waived. See, e.g., Bella Vista United, 2004 WL 825311, at * 10 n. 11 (finding that where plaintiff sought to enjoin enforcement of ordinance prohibiting political campaign posts over 30 days after the election, the balance of equities weighed overwhelmingly in favor of plaintiff and Rule 65(c) bond requirement would be waived).

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, this Court should GRANT the requested preliminary injunction preventing the Township of South Park from enforcing its almost year-round ban on political campaign signs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum of Law in Support of Plaintiff Joseph P. Rudolph's Motion for Temporary Restraining Order and/or Preliminary Injunction was served by electronic mail, hand delivery, and First Class certified U.S. Mail, this 19th day of February 2008, upon South Park Township as follows:

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Paul J. Gitnik
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/s/ Stephanie R. Reiss _____
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