

September 28, 2020

TOWN OF MOORESVILLE
c/o Town Council of Mooresville
4 East Harrison Street
Mooresville, IN 46158
(Via U.S. Certified Mail, Return Receipt Requested)

TOWN OF MOORESVILLE
c/o Town Attorney Chou-il Lee, Esq.
Taft, Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
(Via U.S. Certified Mail, Return Receipt Requested)

RE: Validity and Enforcement of Town of Mooresville Sign Ordinance

Dear Representatives of the Town of Mooresville, Indiana:

Please be advised that this law firm represents the Libertarian Party of Morgan County, Indiana (“LPMCIN”).

The Town of Mooresville is ignoring the ruling of the United States Supreme Court concerning regulation of political signs. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015) is highly critical of such restrictions and perhaps should be reviewed and studied by the Town Council of Mooresville. Its restrictions, as enforced, are discriminatory towards the LPMCIN and political parties and political signs, contrary to the First and Fourteenth Amendments to the United States Constitution and Article One, Section 19 of the Indiana Constitution.

This discriminatory practice is content-based and not justified by a compelling government interest. Specifically, I am referring to the illegal application of Chapter 3, Site Development Standards, Section f, Location and Placement of the Mooresville UDO, Town of Mooresville, Indiana (“Ordinance”).

There are numerous examples of this discriminatory practice. In one instance, the LPMCIN installed a “Rainwater for Indiana” sign in the median of Indianapolis Road in Mooresville. That sign was placed there on May 19, 2020, next to a commercial sign that had been placed there prior to April 18, 2020. Soon thereafter derogatory public comments about the Rainwater sign were made by Town Council President Shane Williams, and the LPMCIN was asked to remove it less than a day later. Both the Rainwater sign and commercial sign were removed by the Town of Mooresville on May 27, 2020, but there were no known public comments concerning the commercial sign by any representative of the Town of Mooresville

before the removal. Only a political sign was subject to derogatory public comments and then immediately removed thereafter. Put bluntly, the Town's enforcement of its Ordinance is illegal and demonstrates an active and illegal effort to silence LPMCIN and apparently and reluctantly one commercial sign (but many similarly situated commercial signs remain in place in Mooresville to this day).

Furthermore, Dave Moore, Public Works Superintendent of the Town of Mooresville emailed Danny Lundy, a representative of the LPMCIN, stating "that the town U.D.O prohibits this (*placement of a sign in the town's right of way*) unless you have been granted permission by the Town Council." There are at least two recent permissions by the Town of Mooresville for non-political signs to be placed in the Town's right of way. The LPMCIN agreed to let the Morgan County Republican Party chair attempt to get permission for all three ballot access parties on the agenda of the Town Council. Town Council President Shane Williams told the chair of the Morgan County Republican Party that this request had to go before the Board of Zoning Appeals. The Board of Zoning Appeals denied the request to be placed on the agenda at least once, stating that it was only doing emergency items due to Covid. The request for permission did eventually get on the BZA agenda on August 13, 2020. The political parties were denied permission to place signs. Town Council President Shane Williams got up and spoke against the political parties placing signs. Clearly, a political organization cannot get permission, but a non-political organization can get permission. This is blatantly unconstitutional pursuant to the holding in *Reed*.

In fact, there are dozens of signs of various types, mostly all non-political, arguably in violation of the Ordinance, but these signs have not been removed by the Town and none have been publicly ridiculed by Town Council President Shane Williams as he has repeatedly done with Libertarian Party political signs. Furthermore, exceptions have been made for a sorority and the parks department for the placement of signage in the right-of-way. This is content-based discrimination and there is no compelling government interest in allowing a sorority or the parks department to place information signage in the right-of-way, but not a political party, candidate, or someone with a political statement to make.

Apparently, political parties have a heightened standard and must ask permission from the Board of Zoning Appeals first and then to the Town Council if there is a negative decision. A sorority only need to email the head of the street department. The parks department can go directly to the Town Council. This discrimination is content-based (political speech) and thus unconstitutional.

Town Council President Shane Williams has also generally tried to communicate with the LPMCIN through Facebook messages and incorrectly told him that Libertarians cannot place political signs before a primary pursuant to I.C. § 36-1-3-11 as it is not running candidates in the election. He has done this numerous times. This is not correct as the statute does not prohibit political signs and does not prohibit the number or size of political signs in the 60 days before and 6 days after an election for it makes no distinction between primary and general elections.

The LPMCIN cannot be silenced because the Town Council President wants to create a special rule for primary elections contrary to the clear wording of the Indiana Code.

Even if the Ordinance was not infirm in its application for the foregoing reasons, it nonetheless fails to meet even basic due process. A business owner or a homeowner cannot determine whether the public road right-of-way ends relative to their property to determine where signs may be placed. Similarly, the Ordinance fails to provide adequate information to determine whether a sign obstructs or interferes with safe movement of vehicular or pedestrian traffic. The Ordinance fails to provide adequate information in order to determine whether a sign is being placed in any drainage or utility easement. The Ordinance fails to provide adequate information to determine whether a sign is being placed in any other natural objects.

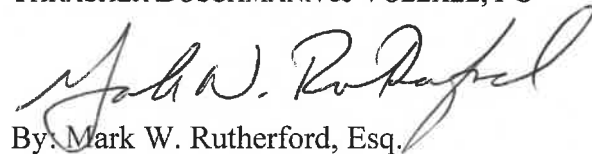
Not only does the Town Council thumb its nose at the U.S. Constitution, the Indiana Constitution, and the U.S. Supreme Court's *Reed* Decision via the Ordinance, it does so to the Indiana General Assembly as well. The Indiana Home Rule Act (*i.e.*, Indiana Code § 36-1-3-1 *et seq.*) sets forth restrictions on the exercise of powers by local units of government such as the Town of Mooresville. The Home Rule Act provides in part that the Town lacks "(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute." *See* I.C. § 36-1-3-8(a)(7). Signage is one area where the State of Indiana has stepped in to regulate.

The Ordinance purports to regulate signage regardless of whether an election is approaching or not, which violates I.C. § 36-1-3-11. More broadly, however, the Ordinance contravenes the Home Rule Act because the Town has not been given express authority to regulate political signage, particularly its placement. Plus, neither the Town nor any state agency has the power to regulate free speech and the placement of signs concerning free speech.

For these reasons, the LPMCIN expects that the Town Council will promptly review the content of this letter and that the same will cause it to rectify the foregoing violations and illegality by, among other things, ceasing the discriminatory practice of removing LPMCIN signage and granting permission for exceptions to its Ordinance to non-political entities only. If action is not taken within fourteen (14) days pursuant to the foregoing demand, then please expect me to recommend that the LPMCIN commence legal action to secure its rights. We expect that the result of legal action will not be unlike the injunction entered in *Sharp v. Hamilton County, et al.*, 29D03-1802-PL-1471 (Hamilton Cnty. Sup. Ct. April 11, 2018).

Very truly yours,

THRASHER BUSCHMANN & VOELKEL, PC



By: Mark W. Rutherford, Esq.

cc: Libertarian Party of Morgan County