

IN THE EIGHTH CIRCUIT COURT OF
DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

RACHEL AND P.J. ANDERSON,))	
)	
Plaintiffs,))	
)	
v.))	Case No. <u>15c3212</u>
)	Hon. Judge Kelvin Jones
THE METROPOLITAN))	
GOVERNMENT OF))	
NASHVILLE AND))	
DAVIDSON COUNTY,))	
)	
Defendant.))	

**MOTION FOR PERMANENT INJUNCTION AND DIRECTED
ENTRY OF A FINAL JUDGMENT ON THE FIRST AMENDMENT
CLAIM**

The Andersons respectfully request under Tenn. R. Civ. P. 54.02, 57 65.02, and 65.04(7) that this Court enter a permanent injunction and directed entry of a final judgment declaring the signage ban placed on short-term rental properties (“STRPs”) found at Metro. Code § 6.28.030(E) in violation of the Tennessee and United States constitutions and permanently enjoining enforcement.

This Court previously entered a preliminary injunction finding, in effect, that there was a substantial likelihood the Andersons would prevail in their claim that the signage ban violated their free speech rights, and that

the ongoing violence to their core, constitutional rights constituted irreparable harm.

At this late stage in the litigation, it correct to say that there are no disputed issues of material fact with respect to the free speech claim. The only material facts are the verified allegations in the complaint and answer, and the declarations previously submitted in the motion for preliminary injunction, which have never been disputed. *See* Tenn. R. Civ. P. 65.04(7) (2015) (any admissible evidence received upon an application for preliminary injunction becomes part of the record and need not be repeated). This issue is purely a matter of law. This Court is now in a position to decide it.

The Andersons therefore request a hearing pursuant to LCv. R. 26.04 and 26.05. They do not anticipate the hearing will be evidentiary unless requested, and the Andersons are certainly amenable to supplementing the record should this Court request it.

Dated: August 17, 2016

Respectfully submitted,

BRADEN H. BOUCEK
B.P.R. No. 021399
BEACON CENTER OF TENNESSEE
P.O. Box 198646
Nashville, TN 37219
Tel.: 615.383.6431
Cell: 615.478.4695
Fax: 615.383.6432
braden@beacontn.org

Counsel for plaintiffs

IN THE EIGHTH CIRCUIT COURT OF
DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

RACHEL AND P.J. ANDERSON,)

Plaintiffs,)

v.)

THE METROPOLITAN)

GOVERNMENT OF)

NASHVILLE AND)

DAVIDSON COUNTY,)

Defendant.)

Case No. 15c3212
Hon. Judge Kelvin Jones

**MEMORANDUM OF LAW AND FACTS IN SUPPORT OF MOTION
FOR PERMANENT INJUNCTION AND DIRECTED ENTRY OF A
FINAL JUDGMENT**

The Andersons, by and through counsel, respectfully submits the following memorandum of law and facts in support thereof in support of their motion for permanent injunction and directed entry of a final verdict. *See* LCv. R. 26.04(b).

Dated: August 17, 2016

Respectfully submitted,

BRADEN H. BOUCEK
B.P.R. No. 021399
BEACON CENTER OF TENNESSEE
P.O. Box 198646
Nashville, TN 37219
Tel.: 615.383.6431
Cell: 615.478.4695
Fax: 615.383.6432
braden@beacontn.org

TABLE OF CONTENTS

STATEMENT OF FACTS 1

 1. Metro’s ban on STRP signs..... 1

 2. Metro’s treatment of other signs in residential areas. 1

 3. The Supreme Court case of *Reed v. City of Gilbert*, 135 S. Ct. 2218 (2015)..... 2

 4. Metro prohibits the Andersons from speaking about STRPs..... 3

 5. The legal proceedings thus far..... 4

 6. Metro rethinks its prior understanding of *Reed* and the signage ban. 5

SUMMARY OF ARGUMENT 7

I. THE ANDERSONS HAVE SHOWN THAT THE STRP SIGNAGE BAN VIOLATES THEIR FREE SPEECH RIGHTS...... 10

 A. The free speech implications of signs. 10

 B. Metro’s STRP signage ban is content-based. 11

 C. The Tennessee Constitution. 12

 D. Metro’s STRP signage ban fails strict scrutiny. 14

II. THE SIGNAGE BAN IRREPARABLY HARMS THE ANDERSONS. 15

III. AN INJUNCTION IS IN THE PUBLIC INTEREST. 16

IV. THE BALANCE OF EQUITIES TIPS IN FAVOR OF THE INJUNCTION. 17

V. THE ANDERSONS ARE ENTITLED TO A FINAL JUDGMENT ON THE MERITS. 18

VI. CONCLUSION 18

STATEMENT OF FACTS

1. **Metro's ban on STRP signs.**

On or about February 26, 2015, Ordinance No. BL2014-951 pertaining to STRPs was signed into effect. Enforcement of the law began on July 1, 2015. The law required STRP users to obtain a permit, comply with a number of legitimate health and safety regulations, and collect taxes. The bill, now informally known as the STRP law, became codified at Metro. Code § 6.28.030.

The STRP law also imposed restrictions on signs located on premises. *See* Metro. Code § 6.28.030(E). Specifically, it reads: “Signs, advertising, or any other display on the property indicating that the dwelling unit is being utilized, in whole or in part, *as a STRP* is prohibited.” (emphasis added).

2. **Metro's treatment of other signs in residential areas.**

Metro's other treatment of signage throughout the city, including residential areas, is quite different. *See* Metro. Code § 17.32. Metro generally prohibits commercial messages for home-based businesses. Metro. Code § 17.16.250(D)(3). Yet Metro permits other types of commercial signage in residential areas, subject to restrictions on duration, height, etc.

Here are some examples. Yard sales are exempt from Metro's general signage restrictions. Metro. Code § 17.32.040(R). So are construction signs, Metro. Code § 17.32.040(S), and signs announcing real estate availability. Metro. Code § 17.32.040(T). Restaurants can advertise their menu. Metro.

Code § 17.32.040(X). Auctions may be advertised as well. Metro. Code § 17.32.040(AA).

More signs are permitted when they are on-premises temporary signs, once again subject to limitations on duration and size. One notable exception to Metro's signage scheme stands out, for present purposes. Quite different from the total ban on advertisements for rental on a short-term basis, property advertisements to sell or rent property *are* permissible. Metro. Code § 17.32.060(C)(2)(a). Fairs, flea markets, carnivals, and circuses may also advertise. Metro. Code § 17.32.060(C)(4). A property owner also may advertise the availability of goods for sale, either on a vacant lot or within a tent. Metro. Code § 17.32.060(C)(5)

3. The Supreme Court case of *Reed v. City of Gilbert*, 135 S. Ct. 2218 (2015).

On June 28, 2015, two days before the STRP law was to go into effect, the Supreme Court issued an opinion in *Reed v. City of Gilbert*, 135 S. Ct. 2218 (2015). The *Reed* opinion struck down as unconstitutional a city's restrictions placed on directional signs.

The importance of the *Reed* decision is that it provided clarity to the previously muddled question of what constituted a content-based restriction on speech. According to the Court: "Government regulation of speech is content based if a law applies to a particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227. The

Court resolved this in a simple fashion: laws that apply based on content are content-based.

Post-*Reed* (and notwithstanding its timing, coinciding with the STRP law's enforcement date), Metro did not address the ban placed upon STRP signs at Metro. Code § 6.28.030(E). The Andersons lawsuit, which raised this very issue, was filed in August of 2015. This too did not prompt a change. In fact, quite the opposite was true, as the Andersons were soon to learn.

4. Metro prohibits the Andersons from speaking about STRPs.

The Andersons are operators of an STRP on 5th Avenue within the Germantown neighborhood of Nashville. They have long been Airbnb hosts. See Exhibit 1, Declaration of Rachel Anderson, Motion for Preliminary Injunction.

Mrs. Anderson requested permission to put up temporary, small advertisements. On August 17, 2015, she emailed Clint Harper from Metro Codes Administration. She wanted to erect a small yard sign that truthfully advertised that the property was available on Airbnb for three days in October of 2015. She also wanted to know if she could place a small sticker in her front door her home so guests would know that they were at the correct location if she removed it once the guests arrived. See Exhibit 1, Declaration of Rachel Anderson, Motion for Preliminary Injunction; Exhibit 6. August 19, 2015 email, Motion for Preliminary Injunction.

She was forbidden to speak about STRPs. Mr. Harper emailed her on August 18, 2016: “No signage is allowed.” *Id.*

5. The legal proceedings thus far.

Metro has consistently defended this decision. Metro moved to dismiss this case, including the free speech claim, for failure to state a claim shortly after it was filed. Motion and Memorandum in Support of Motion to Dismiss. With respect to the free speech claim, Metro maintained that since the signs pertained to commercial speech, they were afforded less constitutional protection. Memorandum In Support of Motion to Dismiss, at 7-8. Metro maintained that the signage ban was constitutional because it advanced an important governmental interest and left open other avenues for the Andersons to speak. *Id.* at pp 8-9.

Metro brushed *Reed* aside as irrelevant. In its reply, Metro argued that *Reed* had no effect on commercial speech, that the lesser test for analyzing restrictions on commercial speech remained applicable, and that Metro’s signage ban on STRPs was perfectly constitutional. Reply to Motion to Dismiss, p. 3. This Court rejected Metro’s argument. Order Granting and Denying Motion to Dismiss in Part.

Metro maintained this position when the Andersons moved for a preliminary injunction. The Andersons moved on the basis of the free speech claim, *see* Motion for Preliminary Injunction. Metro countered that likelihood of succeeding on this claim was “very low,” and reiterated its previous

argument. Response in Opposition to Petition for Temporary Injunction, p. 2. This Court enjoined Metro from enforcing the signage ban, but against the Andersons only. Order Granting and Denying Motion for Preliminary Injunction in Part.

The signage ban otherwise remained in effect. To date, the Andersons are the only Nashvillians legally able to erect an STRP related sign.

6. Metro rethinks its prior understanding of *Reed* and the signage ban.

On July 5, 2016, with the STRP over one year old, the original sponsor of the STRP law itself, Councilmember Burkely Allen, introduced BL2016-309. This bill, now under consideration, substantially amends Metro's signage laws in response to *Reed*.

The legislative findings explicitly recognize: 1) the *Reed* case "outlined when a sign was content based and thus received 1st Amendment protections," 2) other localities around the country were amending their signage codes; and 3) Metro's signage regulations "contains provisions that may constitute impermissible content based regulation under the *Reed* decision." See Ex. A, BL2016-309 (copy attached). The bill then immediately addressed the STRP signage ban. The bill deletes Metro. Code § 6.28.030(E), and instead simply provides that STRP signs are governed by Metro's normal sign regulations. See BL2016-309, § 1 (copy attached).

This change was explicitly prompted by the *Reed* decision. According to the prepared agenda analysis:

The U.S. Supreme Court outlined when a sign was based on content and thus receives 1st Amendment protections in a case known as *Reed v. Town Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). A review of Metro Code of Laws has determined that several sections have definitions involving signs that should be clarified to assure they are in compliance with the findings of the Supreme Court in this case.

Section 6.28.030.E concerns signage for short-term rental property (STRP). It currently prohibits any signage on a property to advertise that it is being used as an STRP. Instead, the section would now specify that signage on STRP properties shall be governed by the provisions of MCL Chapter 17.32 (Sign Regulations).

Ex. B, Agenda Analysis for Metro Council, Aug. 2, 2016, p. 3 (copy attached).

Councilmember Allen, again, the sponsor for both this bill and the original STRP bills, related at the August 2, 2016 council meeting, explained that the change was required by *Reed*: “[A]ccording to the Supreme Court ruling, *which is the reason this entire ordinance is being offered.*” Metro Council Meeting, comments of Burkely Allen, Aug. 2, 2016, 2:30:16-2:30:21.¹

¹ This proceeding is publicly available on Metro’s Youtube channel: <https://youtu.be/BNObDPmMYAs?t=2h30m16s>.

SUMMARY OF ARGUMENT

Metro's total ban on STRP signage is content-based because if the words on the sign were different, the ban would not apply. Metro's treatment of STRP signage cannot pass strict scrutiny. There is not a compelling interest; nor is the ban narrowly tailored.

The stated interests—aesthetics and motorist safety—do not rise to the level of compelling as a matter of law. And because Metro treats many other similar signs in a less onerous fashion, instead regulating their size and duration, it both undermines Metro's stated goals and demonstrates a more narrow way of addressing those goals.

It is time to make this injunction permanent. There are no material facts in dispute. Nothing has come to light in discovery that would alter the Court's previous determination. The only thing that has changed is Metro's legal position, and it is now in accord with the position the Andersons have maintained all along. There is no just reason to delay ruling on this claim.

The factors all weigh heavily in favor of an injunction. Any incursion on free speech rights constitutes irreparable harm and must cease immediately. While the Andersons are currently protected by the existing injunction, the public interest remains wholly unaddressed. All Nashvillians deserve the certainty of knowing that free speech violations cannot abide.

ARGUMENT

This Court has authority under Tenn. R. Civ. P. 54.02 to direct the entry of a final judgment as to one claim upon an express determination that there is no just reason for delay. Tenn. R. Civ. P. 57 authorizes this Court to enter a declaratory judgment, even in the event another adequate remedy exists. Tenn. R. Civ. P. 65.01 provides trial courts with authorization to provide injunctive relief by issuing a permanent injunction.

Tenn. R. Civ. P. 65.04(7) permits the Court to order consolidation of a final trial on the action “[b]efore or after” the hearing of an application for a preliminary injunction. Relying on analogous Supreme Court reasoning, the Tennessee Court of Appeals explained that when an expedited hearing on the merits is appropriate, Rule 65.02(7) “provides a means of securing one.” *Babb v. Cross*, 2013 Tenn. App. LEXIS 112, *9 (Tenn. Ct. App. Feb. 20, 2013) (copy of opinion attached) (quoting *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)). The parties must receive clear notice of consolidation so as to give the parties a full opportunity to present their cases. *Id.*

Under any of these rules, the Andersons must show that they have proven their claim. The standard for issuance of the injunction is usually guided by the familiar, four-part test:

The most common description of the standard for preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury granting the injunction would inflict on the defendant; (3) the

probability that plaintiff will succeed on the merits; and (4) the public interest.

Gentry v. McCain, 329 S.W.3d 786, 792-93 (Tenn. Ct. App. 2010) (quotation and citation omitted). The Court need not consider each of these factors if fewer factors are “dispositive.” *Jones v. City of Monroe*, 341 F.3d 474, 476 (6th Cir. 2003) (citations omitted). The factors are “to be balanced, not prerequisites that must be met.” *Jones v. Caruso*, 569 F.3d 238, 265 (6th Cir. 2009) (citations omitted).

The standard for a permanent injunction is different from a preliminary injunction. The plaintiffs need to show more than a likelihood of success. “In deciding whether a permanent injunction should be issued, the court must determine if the plaintiff has actually succeeded on the merits (i.e. met its burden of proof).” *CIBA-GEICY Corp. v. Bolar Pharmaceutical Co., Inc.*, 747 F.2d 844, 850 (3d Cir. 1984).

This Court has already entered a preliminary injunction, effectively determining that there is a substantial likelihood that the Andersons will prevail. It should be made permanent. See Tenn. R. Civ. P. 65.04(5) (temporary injunction is binding “until a permanent injunction is granted or denied”). Nothing has come to light since then that would contradict that finding. On the contrary, Metro appears to now know that its signage ban on STRP signs is a content-based speech restriction under *Reed* that cannot satisfy strict scrutiny. There are no disputed issues of proof relevant to this issue. The time has come to make the injunction permanent.

This cannot wait. Time and again, the courts have held that First Amendment rights are so important that any infringement is grounds for an injunction. All Nashvillians, not just the Andersons, deserve the full enjoyment of their free speech rights. For their part, the Andersons deserve finality on this critical issue.

I. THE ANDERSONS HAVE SHOWN THAT THE STRP SIGNAGE BAN VIOLATES THEIR FREE SPEECH RIGHTS.

A. The free speech implications of signs.

Free speech is among the most protected of constitutional rights and municipalities have “no power to restrict message, its ideas, its subject matter, or its content.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015) (quotation and citation omitted). Content-based speech restrictions are “presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Id.* A law is content based on its face when it applies because of the topic or idea expressed. *Id.* A law is also invalid when, though facially content neutral, it was adopted out of hostility to the message. *Id.*

In *Reed*, the Court concluded that the signage scheme in question failed strict scrutiny because it was under-inclusive, meaning that it did not go far enough to meet its goals. While the defendant said its restrictions on signage were a means of protecting the aesthetics of the city and promote motorist safety, the voluminous exemptions in the city’s code contradicted those purposes. 135 S. Ct. at 2231-32.

A. Metro's treatment of signs.

Metro's STRP signage ban suffers from the same fatal flaw. As related above, while Metro permits signs for fairs and carnivals, *see* Metro. Code § 17.32.060(C)(4); yard sales, *see* Metro. Code § 17.32.040(R), and restaurant menu boards, *see* Metro. Code § 17.32.040(X); (subject to limitations as to form and duration), and *even* signs that advertise that a property is available for rent, (just not on a short-term basis), *see* Metro. Code § 17.32.060(C)(2)(a), Metro categorically prohibits any sign advertising that a property is available for rent "as a STRP." Metro. Code § 6.28.030(E).

B. Metro's STRP signage ban is content-based.

The facts are not in dispute. The ban only applies to signs that contain the words, "STRP." When those words are omitted from a "For Rent" sign, the sign becomes perfectly legal if it otherwise abides by size and time limits. Metro. Code § 17.32.060(C)(2)(a).

This law is not hard to identify as content-based. It "applies to a particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227. This is a "paradigmatic example of content-based discrimination." *Id.* at 2230. It is of the sort described by the Court in *Reed* as "obvious, defining regulated speech by particular subject matter. ..." 135 S. Ct. at 2227.

Thus, when Mrs. Anderson wanted to put up her small, unobtrusive signs that would have only been up for a matter of days, she was prohibited.

It was purely because of the content because, to quote Metro Codes: “No signage is allowed.” See Exhibit 1, Declaration of Rachel Anderson, Motion for Preliminary Injunction; Exhibit 6. August 19, 2015 email, Motion for Preliminary Injunction. This answer would have been different if it did not contain an STRP related message. It was because of the *content* of her speech that her request was denied.

Again, these facts are not subject to reasonable dispute. What *used* to be in dispute was purely legal. Metro challenged whether *Reed* applied to commercial speech, and whether its ban withstood constitutional scrutiny. The only thing that has changed since the Court issued the preliminary injunction is that Metro is apparently rethinking its stance.

C. The Tennessee Constitution.

Owing to the Tennessee Constitution, the signage ban becomes even more impermissible. Because of the greater protections of the Tennessee Constitution, the Andersons could only enjoy stronger protections of their right to speak. Various federal courts have split over whether *Reed* extends to commercial speech. Compare *Central Radio Co. Inc. v. City of Norfolk, Va.*, 811 F.3d 625, 633 (4th Cir. 2016) (sign code ordinance that prohibits signs with art “that referenced a product or service” is unconstitutional); *Thomas v. Schroer*, 127 F. Supp. 3d 864, 873 (W.D. Tenn. 2015); with *Dana’s R.R. Supply v. AG*, 807 F.3d 1235 (11th Cir. Nov. 4, 2015) (distinguishing *Reed* from commercial speech)

This Court should rule based on the understanding that the Tennessee Constitution affords more protection. Article I, Section 19 provides that “every citizen may freely speak, write, and print *on any subject*.” (emphasis added). Tennessee’s free speech protections should be considered more robust than the First Amendment. *See Doe v. Doe*, 127 S.W.3d 728, 732 (Tenn. 2004) (free speech rights “at least as broad” as the U.S. Constitution). The Tennessee Supreme Court, while never squarely holding, has long intimated that free speech protections under the Tennessee Constitution exceed the protections of the First Amendment. *See, e.g., Davis-Kidd Booksellers*, 866 S.W.2d 520, 525 (Tenn. 1993) (reserving authority as “court of last resort”).

If there is ever a time to find greater protection, it is now. According commercial speech lesser protection contradicts the plain text of the Tennessee Constitution, which offers protection "on any subject." In the face of a *federal* split this Court should give full effect to the robust protections of free speech found in the Tennessee Constitution by using strict scrutiny. Even under federal law, the commercial speech doctrine, at best, hangs by the thinnest of strands with some federal courts now applying *Reed* even to speech with a commercial content. For Tennessee’s Constitution to amount to anything at all, this Court should err in favor of liberty and apply strict scrutiny.

D. Metro's STRP signage ban fails strict scrutiny.

Metro must show “that the Code’s differentiation between [STRP signs] and other types of signs ... furthers a compelling governmental interest and is narrowly tailored to that end.” *Reed*, 135 S. Ct. at 2231. Because Metro bears the burden of proof, the Andersons “must be deemed likely to prevail,” *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004), unless Metro can show that there are no less restrictive means.

There is not a compelling interest. Metro argues that the signage ban protects aesthetics and safety. Memorandum in Support of Motion to Dismiss, pp. 8-9. These interests do not rise to the level of compelling. As the Fourth Circuit wrote, “[a]lthough interests in aesthetics and traffic safety may be substantial government goals, neither we nor the Supreme Court have ever held that they constitute compelling governmental interests.” *City of Norfolk*, 811 F.3d at 633-34.

Furthermore, if it truly was concerned with aesthetics and safety, Metro’s ordinance is “hopelessly underinclusive.” *See Reed*, 135 S. Ct. at 2231. A temporary sign that reads, for instance, “For rent,” is no different from a sign that reads “For rent *on Airbnb*.” Yet the first sign is perfectly acceptable while the second is completely banned. *Compare* Metro. Code § 17.32.060(C)(2)(a) *with* Metro. Code § 6.28.030(E). There is no justification for cities targeting speech based on content.

Indeed, there is unique value to Mrs. Anderson's signs. Correctly informing people that they have arrived at the correct home potentially averts the life threatening misunderstandings that could occur from entering the wrong home.

When put to the narrowly tailored test, the signage ban is a hideous failure. As in *Reed*, Metro's ban on STRP signs is overinclusive and underinclusive. Merely treating STRP signs the same way other signs are treated could easily protect aesthetics and safety. *See, e.g.*, Metro. Code §§ 17.32.040, 17.32.060(D), (E). In fact, the very existence of BL2016-309, even if it does not pass, demonstrates that more narrowly tailored means exist to protect the sanctity of neighborhoods.

It is not that signs must go unregulated. Limitations on size, color, and location are permissible under *Reed*. Cities just may not hold different signs to different restrictions based on content. Here, Metro differential treatment takes the most extreme form—a total ban on disfavored speech. Simply treating like speech alike can satisfy Metro's goals. There can be no doubt that the ban is not narrowly tailored.

II. THE SIGNAGE BAN IRREPARABLY HARMS THE ANDERSONS.

A finding that the ban violates the Andersons' constitutional rights certainly constitutes irreparable harm, and typically resolves the entire four-factor test. *See Taubman Co. v. Webfeats*, 319 F.3d 770, 778 (6th Cir. 2003). When First Amendment freedoms are at stake, the factors “are essentially

encompassed by the analysis of the movant's likelihood of success on the merits." *Am. Freedom Def. Initiative v. Suburban Mobility Auth. For Re'gl Transp.*, 698 F.3d 885, 890 (6th Cir. 2012).

Beyond question, burdening the Andersons' free speech rights necessarily means they suffer irreparable harm. Such a loss "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). See *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014) (citations omitted). "It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quotation and citation omitted).

This factor only weighs more heavily now than it did at the time of the preliminary injunction because prevailing is now a certitude. There is now a certainty that the signage ban violates the Andersons rights.

III. AN INJUNCTION IS IN THE PUBLIC INTEREST.

The public interest is overwhelmingly served by issuing the permanent injunction because the public interest is served by the protection of liberty. The public "as a whole has a significant interest in ... protection of First Amendment liberties." *Husted*, 751 F.3d at 412 (quoting *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995)). See *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir.

2015) (“it is always in the public interest to prevent the violation of a party’s constitutional rights.”).

Here, the public interest weighs especially heavy because the public has not enjoyed the benefit of the preliminary injunction. Whereas the preliminary injunction provides temporary relief to the Andersons, the city overall suffers from this undue and unnecessary form of censorship. It is time for the freedom enjoyed by the Andersons to be broadly shared. *See ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir 2003) (“neither the government nor the public generally can claim an interest in the enforcement of an unconstitutional law.”).

As an additional benefit, a finding by this Court that *Reed* does apply, and the ban would fail strict scrutiny, would provide meaningful guidance in the ongoing debate surrounding BL2016-309.

IV. THE BALANCE OF EQUITIES TIPS IN FAVOR OF THE INJUNCTION.

Metro would undergo no harm. STRP signs would still be governed by Metro’s regular signage code. Many other similar signs are permitted. Nashville’s neighborhood appeal endures. Furthermore, BL2016-309 is evidence that the harm presented by the signs was not such a concern in the first place. There simply is no harm to balance.

V. THE ANDERSONS ARE ENTITLED TO A FINAL JUDGMENT ON THE MERITS.

The Andersons ask this Court to convert the preliminary injunction to a permanent one, consolidate this claim with a final hearing on the merits, and declare the signage ban unconstitutional, null, and void. This Court has all the information necessary to rule. There are no material disputes of fact that would constitute grounds to reconsider the Court's previous finding. The public deserves the same protection. Ruling at this stage would not only vindicate the constitutional rights of the Andersons and the public, it would streamline the anticipated motions for summary judgment by eliminating one substantial topic for briefing.

VI. CONCLUSION

For the foregoing reasons, the Andersons respectfully request that the Court grant the instant motion and enter a final judgment and permanent declaratory and injunctive relief on the free speech claim.

Dated: August 17, 2016

Respectfully submitted,

BRADEN H. BOUCEK
B.P.R. No. 021399
BEACON CENTER OF TENNESSEE
P.O. Box 198646
Nashville, TN 37219
Tel.: 615.383.6431
Cell: 615.478.4695
Fax: 615.383.6432
braden@beacontn.org

Counsel for plaintiffs