UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NEAL MORRIS, Plaintiff, v. The CITY OF NEW ORLEANS, Defendants	CIVIL ACTION NO.: JUDGE: MAGISTRATE JUDGE:

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

> At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.[1]

In the course of enforcing municipal ordinances that regulate signage on private property, the City of New Orleans has declared itself the final arbiter of permissible artwork. Plaintiff Neal Morris is a New Orleans resident, property owner, and preservation developer who believes that so-called "street art" makes the

[1] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641-42 (1994).

world a better place. To that end, he supports local and national artists by commissioning them to paint murals on properties he owns.

A few days after Mr. Morris had an artwork painted on his property, the City of New Orleans Department of Safety and Permits issued a letter informing Mr. Morris of a zoning violation. The letter demanded that the mural be removed; it threatened him with jail time and a fine if he failed to comply. Although the letter did not specify the amount of the fine or the length of the threatened imprisonment, it warned of a "maximum fine or jail time for each and every day the violation continues plus court costs as prescribed by law." Plaintiff has filed, contemporaneously, a Complaint and Motion for Preliminary Injunction seeking to prevent the threatened punishment and enforcement of the City's mural-permitting scheme. Plaintiff seeks this relief as necessary to preserve the status quo while the Plaintiff's plea for declaratory and injunctive relief is fully considered. If not enjoined, the City may begin enforcement proceedings imminently.

The City of New Orleans' mural-permitting scheme is an extensive, burdensome process that severely infringes the rights of property owners. The City vests itself with unbridled discretion to determine what constitutes permissible art, using a multi-tiered review process that impermissibly regulates speech based on its content. Plaintiff seeks to prevent the City from further abridging his First Amendment rights of freedom of speech and expression and to preclude the City

from (1) penalizing him for the continued display of artwork, and (2) forcing him to remove his mural. Accordingly, based on the following arguments and authorities, Plaintiff respectfully requests entry of a Preliminary Injunction against Defendant pursuant to Fed. R. Civ. P. 65. Plaintiff is entitled to preliminary injunctive relief, as he demonstrates below: (1) a likelihood of success on the merits; (2) the irreparable nature of the harm threatened; (3) the threat to Plaintiff outweighs any potential harm to the City; and (4) the injunction is not adverse to the public interest.

FACTS

On Nov. 4, 2017, Mr. Morris had a mural painted on a property he owns at 3521 South Liberty Street.[2] The mural presents an excerpt from an infamous quotation by President Donald Trump, using images instead of certain offensive words. About four days later, the City of New Orleans Department of Safety and Permits issued a letter informing Mr. Morris of an alleged zoning violation. The letter from Jennifer Cecil, director of the City's "One Stop for Permits and Licenses," stated that an inspection of the property on Nov. 8, 2017, revealed a violation, and it cited the Section 12.2.4(8) of the New Orleans Comprehensive Zoning Ordinance ("CZO"), which the letter referenced as "Prohibited Signs—Historic District." The letter carried the following description: "The mural on the building on this property

[2] The property's registered owner is a limited liability company, New Orleans Apartment Management and Marketing, which is owned by Plaintiff Morris.

is not allowed in that the property is zoned residentially and murals shall not be permitted in any residentially zoned historic district." The letter demanded that Mr. Morris remove the mural by Nov. 22, 2017, and it threatened him with jail time and a fine if he failed to comply. Although the letter did not specify the amount of the fine or the length of the threatened imprisonment, it warned of a "maximum fine or jail time for each and every day the violation continues plus court costs as prescribed by law."

The CZO forbids any person to "commence a mural installation on a site without development plan and design review approval by the Executive Director of the City Planning Commission and the Design Advisory Committee[.]" CZO § 21.6.V.1(a). Violation of the CZO is a misdemeanor punishable by the maximum fine established in the Louisiana Revised Statutes, or a maximum of 150 days imprisonment, or both. CZO § 1.6.B. The New Orleans Municipal Code ("the Code") also requires that all proposed murals be subject to "advance review and approval by the board of murals review prior to issuance of a permit." § 134-78. Violation of the Code's mural provisions is a misdemeanor, conviction of which carries a minimum fine of $500 for each violation. § 134-39. A murals-permit application requires, *inter alia*, "detailed project information and specifications which enable a design review by the staffs of the city planning commission, historic district landmarks commission and any other agency or organization deemed

appropriate and necessary by the board of murals review." § 134-78A. The "board of murals review" is not defined in the CZO or the Code; its membership and governance are likewise undefined. As defined by the CZO, the "design review" process contains no standards relevant to the composition of an artistic mural or standards sufficiently specified to provide notice of them to an applicant. In addition, neither the Code nor the CZO provides a timeline for the mural-permit application. The Code requires the unspecified "designated agency or organization" chosen by the board of murals review to complete its design review within 45 days and forward its recommendations to the board of murals review, which "may extend the design review beyond 45 days where further examination or architectural design specification is determined necessary[.]" § 134.78-A(6). The City Council is required to hold a public hearing and take action "by motion of approval, modified approval, or denial" on a motion within 60 days of a City Planning Commission recommendation. CZO § 4.2.D. However, beyond the specified 90-day and 60-day deadlines, no time limit is proscribed for a mural permit's ultimate approval.

In an attempt to address the alleged violation, Mr. Morris responded with a letter, dated Nov. 17, 2017, in which he requested clarification of the alleged violation. Mr. Morris received no response to his Nov. 17, 2017, letter. Mr. Morris now sues the City under 42 U.S.C. § 1983 for violation of his constitutional rights. Plaintiff meets all requirements for injunctive relief.

ARGUMENT

I. Preliminary Injunction Standard

This motion is filed pursuant to Fed. R. Civ. P. 65(a). The grant or denial of a preliminary injunction lies within the district court's discretion. *Lando & Anastasi, LLP v. Innovention Toys, L.L.C.*, No. 15-154, 2015 U.S. Dist. LEXIS 140454, at *3 (E.D. La. Oct. 15, 2015) (citing *Janvey v. Alguire*, 647 F.3d 585, 592 (5th Cir. 2011); *Canal Auth. Of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

A plaintiff seeking a preliminary injunction must clearly show (1) a substantial likelihood that he will prevail on the merits; (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted; (3) his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin; and (4) granting the preliminary injunction will not disserve the public interest. *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 837 F.3d 477, 488 (5th Cir. 2016).

"When analyzing the degree of 'success on the merits' that a movant must demonstrate to justify injunctive relief, the Fifth Circuit employs a slidling scale involving balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits." *McWaters v. Federal Emergency Mgmt. Agency*, 408 F. Supp. 221, 228 (E.D. La. 2006). "Moreover, when the other factors weigh in favor of an injunction, a showing of some likelihood of success on the merits will justify temporary injunctive relief."

Id. As set forth below, Plaintiff has a strong likelihood of success on the merits. Because the "loss of constitutionally protected freedoms in and of itself constitutes irreparable harm," *Entm't Software Ass'n v. Foti*, 451 F. Supp. 2d 823, 837 (M.D. La. 2006), the preliminary injunction should be granted.

II. Defendant Bears The Burden of Proof

For cases in which fundamental First Amendment rights are at stake, the U.S. Supreme Court has found that the government, not the Plaintiff, must bear the burden of proving not only a compelling government interest, but that less restrictive means are inadequate to serve that interest. *Ashcoft v. ACLU*, 542 U.S. 656, 666 (2004); *Gonzales v. O Centro Espirta Beneficente Unio do Vegtal*, 546 U.S. 418, 429 (2006). To guard against the threat against government censorship of First Amendment rights, the "Constitution demands that content-based restrictions on speech be presumed invalid," and that the Government bear the burden of showing their constitutionality." *Ashcroft*, 542 U.S. at 660 (*citing R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992), *U.S. v. Playboy Entertainment Group*, 529 U.S. 803, 817 (2000)).

III. Plaintiff Is Likely To Succeed On The Merits Of His Claims

The First Amendment is applicable to the states by virtue of the Fourteenth Amendment. *Everson v. Bd. of Educ.*, 330 U.S. 1, 8, 67 S. Ct. 504, 91 L. Ed. 711

(1947). Thus the U.S. Constitution commands that a state "shall make no law … abridging the freedom of speech." U.S. Const. amend. I.

Murals are artistic expression protected by the First Amendment. *Bery v. City of New York*, 97 F.3d 689, 695, (2d Cir. 1995) ("Visual art is as wide ranging in its depiction of ideas, concepts and emotions as any book, treatise, pamphlet or other writing, and is similarly entitled to full First Amendment protection."); *see also White v. City of Sparks*, 500 F.3d 953, 956 (9th Cir. 2007) (holding plaintiff's "self-expression through painting constitutes expression protected by the First Amendment."); *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 924 (6th Cir. 2003) (holding the "protection of the First Amendment is not limited to written or spoken words, but includes other mediums of expression, including music, pictures, films, photographs, paintings, drawings, engravings, prints, and sculptures.").

A. The Murals-Permit Scheme Is A Prior Restraint

The City's requirements for obtaining a mural permit subject Plaintiff and other property owners to a prior restraint on speech, and as such it is presumptively invalid. *See Avis Rent A Car Sys v. Aguilar* (529 U.S. 11388, 1142, 120 S. Ct. 2029, 2032) (2000) (citation omitted) (noting that injunctions against speech are evaluated as prior restraints, which entails "the strictest scrutiny known to our First Amendment jurisprudence."); *Def. Distributed v. United States Dep't of State*, 838 F.3d 451, 472 (5th Cir. 2016) (citation omitted).

Permitting schemes require a speaker to obtain permission from the government prior to engaging in constitutionally protected activity. "It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition." *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002). "[W]e and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum." *Berger v. City of Seattle*, 569 F.3d 1029, 1039 (9th Cir. 2009) (en banc).

The U.S. Supreme Court has stated that while "prior restraints are not unconstitutional *per se* … [a]ny system of prior restraint … comes before this Court bearing a heavy presumption against its constitutional validity." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225 (1990) (citation omitted). The Court noted "two evils that will not be tolerated in such schemes … [f]irst, a scheme that places unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship." *Id*. at 226 (internal quotation and

citation omitted). "Second, a prior restraint that fails to place limits on the time within which the decisionmaker must issue the license is impermissible." *Id*. (citation omitted).

The City's murals-permit scheme includes both of the "evils" identified by the Supreme Court. It places unbridled discretion in the hands of multiple City officials or departments, which may result in censorship. Under the plain terms of the Code and CZO, the City subjects all mural applications to review by at least three City departments: the City Planning Commission, the Design Advisory Committee, and the Board of Murals Review, with ultimate approval authority left to the City Council. Additionally, a permit is subject to review by "any other agency deemed appropriate and necessary by the board of murals review." § 134-78A. This is the very essence of unbridled discretion—review by an unknown, unnamed agency for an undefined purpose. The Board of Murals Review is likewise a complete mystery, as are the standards it uses to review the artwork submitted by applicants. The entire design review process lacks defined standards that would give an applicant notice of what is permissible, and what is not. It is also entirely open-ended, failing to place any time limits on the decisionmaker—i.e. the City, through its various departments—within which a permit must be issued or denied. Because the City's scheme contains both of these "evils," it is therefore an unconstitutional prior

restraint. This Court should grant Plaintiff's request for a preliminary injunction for this reason alone.

B. The Murals-Permit Scheme Is Content-Based

Because the City's murals-permit scheme is a content-based regulation, it must show that its regulation is necessary to serve a compelling government interest and that it is narrowly tailored to achieve that end. *Id*. (citing *Carey v. Brown*, 447 U.S. 455, 461 (1980)). In other words, if the City's scheme discriminates on the basis of content or viewpoint, it must demonstrate that its scheme survives strict scrutiny. *See, e.g.*, *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009).

As dictated by the U.S. Supreme Court in *Reed v. Town of Gilbert*, a court must first determine whether a law is content neutral on its face. 135 S. Ct. 2218, 2229 (2015). A court asks whether the law "applies to particular speech because of the topic discussed or the idea or message expressed." *Id*. at 2227. Obvious facial distinctions based on a message define regulated speech "by particular subject matter," while subtle distinctions define regulated speech "by its function or purpose." *Id*. A speech regulation "targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter," consequently, even a viewpoint-neutral law can be content-based. *Id*.

If a law is not content neutral on its face, the law is subject to strict scrutiny regardless of the government's purported motive. *See id*. at 2227-28. A court need

not "consider the government's justifications or purposes . . . to determine whether" a facially content-based regulation of speech is subject to strict scrutiny. *Id*. at 2227.

Here, the City's murals-permit scheme is content-based because its regulation of murals is based on its subject matter and its function/purpose, i.e. artwork. A mural is defined as "a work of art painted or otherwise applied to or affixed to an exterior wall surface that does not include any on- or off-premise commercial advertising." CZO § 26.6. By contrast, a sign is defined as "[an]y structure, display, device, or inscription which is located upon, attached to, or painted or represented on any land, structure, on the outside or inside of a window, or on an awning, canopy, marquee, or similar structure, and which displays or includes any numeral, letter work, model, banner, emblem, insignia, symbol, device, light, trademark, or other representation used as, or in the nature of, an announcement, advertisement, attention-arrester, direction, warning, or designation of any person, firm, group, organization, place, community, product, service, business, profession, enterprise, or industry." CZO §26.6.

Under the above-cited definitions, a mural is regulated differently from a sign based on two indefinite criteria. A mural is "a work of art" that "does not include … advertising." Either a sign or a mural may be affixed to an exterior wall, therefore it is only the content or purpose of a mural that justifies its regulation. Indeed, "political and non-commercial message signs" at exempt from sign-permit

requirements. CZO § 24.9.G. As these provisions demonstrate, the City's murals-permit scheme defines the regulated speech (murals) by its subject matter, function, and purpose (artwork). It also defines them explicitly by reference to content (the absence of advertising). The City regulates murals *because* they are artworks, and therefore its regulations are content-based.

Additionally, the City's content-based regulation of murals is far more insidious and less explicit. As the aforementioned "design review" process suggests, the City is in fact engaged in content review. The City's scheme requires review by no less than three City departments: the City Planning Commission, the Design Advisory Committee, and the Board of Murals Review, with ultimate authority left to the City Council. Implicit in this process is the government's examination of a proposed mural for its content—the images and messages depicted. As discussed above, the City does not define its Board of Murals Review—neither its membership, its function, or the standards by which murals are reviewed. Likewise, no standards are given for the design review. Examination of the City's opaque scheme leads to the inescapable conclusion that it has legislated a review process that enables discrimination based on content, and consequently enables censorship.

Because the City's murals-permit scheme is content based, it must show that its regulation is necessary to serve a compelling government interest and that it is narrowly tailored to achieve that end. Although the regulation of aesthetics has been

recognized as a legitimate government interest under limited circumstances, it is neither compelling nor narrowly tailored here. Any casual observer in New Orleans can view a variety of murals, in a variety of styles, with various messages, on various types of buildings, in various neighborhoods—no governing principle can be discerned. Combined with the City's selective enforcement, this demonstrates that the City is not engaged in regulating aesthetics but content, citing for violation only those murals whose messages or images offend or are deemed objectionable.

More importantly, the City's murals-permit scheme is not narrowly tailored to achieve any legitimate government interest. As noted, it is a blanket prohibition on unpermitted murals on private property throughout the City. An application requires a $500 fee per mural, per location. § 134-85(7). It also requires extensive documentation and numerous forms. § 134-78A. Multiple City officials or departments review an application, using unspecified standards, over an indefinite period of time. Because the City's scheme is content-based, does not serve a compelling government interest, and is not narrowly tailored, it is unconstitutional.

C. The Murals-Permit Scheme Violates Due Process

According to the U.S. Supreme Court, a law "fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges or jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each

particular case." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). A law is unconstitutionally vague if it violates "the requirement that a legislature establish minimal guidelines to govern law enforcement." *Id*. at 65.

The City's murals-permit scheme violates Plaintiff's due process rights as applied because he has been cited for violating a regulation that is not defined. The letter he received from the City of New Orleans Department of Safety and Permits cited Section 12.2.4(8) of the CZO, which the letter referenced as "Prohibited Signs—Historic District." However, no such section exists in the CZO, nor does the CZO prohibit signs (or murals) in a historic district. Despite Plaintiff's attempt to obtain clarification of the violation, the City has not explained this discrepancy.

Moreover, the City's murals-permit scheme fails to meet the requirements of the Due Process Clause for several reasons. First, it fails to set any limitations on the time within which an applicant's permit must be granted or denied. When a licensor has "unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion." *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 227 (1990). "A scheme that fails to set reasonable time limits on the decisionmaker creates the risk of indefinitely suppressing permissible speech." *Id*.

In addition, the City's murals-permit scheme violates due process because it is vague and standardless, as described above. Nowhere in the City Code or CZO does it proscribe legally fixed standards for murals. Despite the burdensome

application and arduous review process, the City's scheme fails to put applicants on notice exactly what is prohibited in a mural. The definitions alone are so vague as to be interchangeable—it is impossible to determine from the definitions of "sign" and "mural" how a code enforcement officer determined that Plaintiff's artwork is a mural, not a sign. Because it is a "display … painted or represented on any … structure … which displays or includes any … letter work … [and] symbol … used as, or in the nature of … attention-arrester," it meets the definition of a sign. CZO §26.6. For all these reasons, the City's scheme unconstitutionally violates due process.

D. The Murals-Permit Scheme Violates Equal Protection

Finally, the U.S. Supreme Court has recognized that equal protection claims may be brought by a "class of one" where the plaintiff alleges that he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam) (citations omitted). The purpose of the Equal Protection Clause of the Fourteenth Amendment "is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Id*. (citing *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445 (1923)).

In *Willowbrook*, a homeowner alleged that a municipality demanded a 33-foot easement as a condition of connecting her property to the municipal water line, whereas only a 15-foot easement was required from other property owners in her subdivision. *Id*. at 562. Here, Plaintiff alleges that the City has singled him out for prosecution because it finds the content of his mural offensive or objectionable. Notably, he received a notice of violation almost immediately after his mural generated attention in the media.

Moreover, the City engages in selective enforcement by turning a blind eye to other murals it has deemed acceptable. For example, a mural by the internationally renowned artist Yoko Ono was recently painted on the side of the Ogden Museum at 925 Camp Street. Upon information and belief, no permit for the mural had been issued when it was painted on Nov. 15, 2017, and the building owner was never cited for a zoning violation for the mural. In addition, City-owned buildings such as the firehouse at 801 Girod Street bear murals for which no permit has been issued, and for which no zoning violation has ever been issued. Upon information and belief, longstanding, existing murals have been painted on buildings throughout the City for which no permit has ever been issued, and no notice of violation has ever been issued.

As these actions demonstrate, the City is engaged in selective enforcement of its mural-permit scheme, citing property owners for violations only other residents

complain about a mural or a City official determines, unilaterally, that the mural is offensive or objectionable. It has subjected Plaintiff to intentional and arbitrary discrimination by the improper execution of its regulatory scheme through duly constituted agents, i.e. a code enforcement officer. Consequently, the City has unconstitutionally violated Plaintiff's right to equal protection.

IV. Plaintiff Will Suffer Irreparable Harm Without The Injunction

As explained above, the murals-permit scheme violates Plaintiff's long established First Amendment rights. That violation is an irreparable harm per se. Interference with First Amendment rights for any period of time, even for short periods, constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713, 91 S. Ct. 2140, 29 L. Ed. 2d 822 (1971)); *Def. Distributed v. United States Dep't of State*, 838 F.3d 451, 462-63 (5th Cir. 2016); *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295-97 (5th Cir. 2012).

Because the City's scheme "unjustly infringes upon First Amendment freedoms, there is a substantial likelihood that irreparable harm will result if the [preliminary injunction] is not granted." *Wexler v. City of New Orleans*, 267 F. Supp. 2d 559, 568 (E.D. La. 2003). If the injunction is not granted, Plaintiff has the option of either (1) removing his mural and facing prosecution, including the threatened jail time and maximum fine for every day of continuing (alleged)

violation; (2) leaving the mural up and facing prosecution, including the threatened jail time and maximum fine for ever day of continuing (alleged) violation. Either of these choices is a violation of his constitutional rights, and therefore he will suffer irreparable harm if an injunction is not granted.

V. The Threatened Injury Outweighs Any Harm To Defendant

An injunction poses no threat to Defendant because the conduct proscribed by the murals-permit scheme is itself no threat, and has long been deemed protected. Creative expression through the creation of murals does not harm the safety or welfare of the City, its residents, or any person passing through it. If the City and its officials are enjoined from enforcing the ordinance, Plaintiff and others like him who choose to adorn their properties with murals will simply continue to do so without the unlawful threat of harassment or prosecution. By contrast, Plaintiff faces a serious curtailment of his fundamental rights if enforcement is not enjoined. If the Ordinance remains enforceable, Plaintiff "will be denied First Amendment Freedoms . . . whereas Defendant[s] do not appear to be at any risk of suffering harm. Thus in balancing the equities, the scale tips in favor of the [P]laintiff[]." *Wexler*, *id.*, at 568-569.

The City has no legitimate interest or right in restricting fundamental freedoms of property owners in this community. The First Amendment right to expression, in this case artistic expression through murals, must be granted the same

protection in any community as the First Amendment right to speak—and the City does not presume to require permits for speech. Plain and simple, this murals-permit scheme is designed to restrict a certain type of speech, or to criminalize those who engage in that speech, and the City lacks the authority to engage in that type of restriction.

VI. Granting The Injunction Will Serve The Public Interest

The public has an unchallenged interest in preventing violations of the First Amendment. The public interest is always served by ensuring compliance with the Constitution and civil rights law. *See, e.g.*, *Valley v. Rapides Parish School Board*, 118 F.3d 1047, 1056 (5th Cir. 1997) (finding that public interest would be undermined if unconstitutional actions of a school board were permitted to stand); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (holding that it is always in the public interest to prevent violation of constitutional rights). The public "is best served by enjoining a statute that unconstitutionally impairs First Amendment rights." *Forum for Acad. & Inst. Rights v. Rumsfeld*, 390 F.3d 219, 246 (3rd Cir. 2004).

An injunction would eliminate the Ordinance's chilling effect on the exercise of free speech and the tacit implication that creative expression requires government approval. "The public interest is best served by enjoining the effect of any ordinance which limits potentially constitutionally protected expression until it can be

conclusively determined that the ordinance withstands constitutional scrutiny." *Wexler*, id., at 569.

CONCLUSION

For the reasons set out above, this Court should issue the preliminary injunction as outlined in Plaintiff's Motion for Preliminary Injunction.

Respectfully submitted by:

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