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**Via U.S. Mail
and Electronic Mail to:**
len@torcivialaw.com

Leonard G. Rubin
Northpoint Corporate Center
701 Northpoint Parkway
Suite 209
West Palm Beach, FL 33407

Subject: *Unconstitutionality of Village of North Palm Beach Code of Ordinances Chapter 6, Article V, Sec. 6-114*

Dear Mr. Rubin,

We represent State Rep. Mike Caruso (“Rep. Caruso”) in this matter. Write to demand that your client cease and desist from seeking to enforce Village of North Palm Beach Code of Ordinances Chapter 6, Article V, Sec. 6-114 (“Sec. 6-114”) against Rep. Caruso’s supporters, and, specifically, from fining any of Rep. Caruso’s supporters for violating the terms of Sec. 6-114. Sec. 6-114 is an unconstitutional provision, in violation of the First Amendment of the United States Constitution, as recognized in analogous circumstances by federal courts, and, most importantly, by the Supreme Court decision *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (differential treatment of signs by local government based on their content violates the First Amendment).

By displaying yard signs in support of Rep. Caruso, Rep. Caruso’s supporters have sought to exercise their First Amendment right to speak in support of a particular political candidate, a right incorporated against the State of Florida and its municipalities by the Fourteenth Amendment of the United States Constitution. Enforcement of Sec. 6-114 against Rep. Caruso’s supporters violates the First Amendment right to free speech by subjecting the political speech of Rep. Caruso’s supporters to different treatment than other forms of speech.

Sec. 6-114 facially discriminates against political speech by creating different restrictions for temporary signs of a political nature:

Political sign. Nothing shall be construed to regulate the content or internal design of a political sign. Signs advertising political events and functions shall not be displayed more

than thirty (30) days prior to the event or function and shall be removed not more than seven (7) calendar days following the event or function advertised by the sign. Campaign signs shall not be displayed more than thirty (30) days prior to the election or vote to which they are directed and shall be removed within seven (7) days following the election or vote.

Sec. 6-114(E)(2)(f.). In addition, Sec. 6-114 facially discriminates against political speech by varying the permissible size, height, and number of temporary signs based precisely on whether said signs are political in nature:

Political signs. Temporary political signs, each not exceeding five (5) square feet in sign area and not more than five (5) feet in height, may be displayed on any parcel within the village. Political signs are limited to one (1) sign per candidate or issue, per parcel in any federal, state, county or municipal election. Political signs shall not be placed on any parcel within the village without the consent of the property owner. For vacant parcels, the property owner's written consent must be filed with the village clerk prior to the erection or placement of any temporary political signs.

Sec. 6-114(F)(2). The foregoing sign limitations are arbitrary and cannot survive First Amendment scrutiny.

“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution,” and “[t]he First Amendment affords the broadest protection to such political expression in order to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976)) (internal quotation marks omitted).

Further, restrictions that discriminate between particular types of speech based on its subject matter or content, such as those that distinguish between non-political and political speech, are inherently suspect. *See, e.g., Consol. Edison Co. v. Pub. Serv. Comm’n*, 447 U.S. 530, 537 (1980) (“As a general matter, ‘the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’”) (quoting *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)); *see also City of Ladue v. Gilleo*, 512 U.S. 43, 59 (1994) (“With rare exceptions, content discrimination in regulations of the speech of private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one.”) (O’Connor, J., concurring) (citing *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U.S. 105, 115-116 (1991)).

Thus, the Supreme Court has held, in a case for all intents and purposes identical to the present, that when a local government “identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions,” such “provisions are content-based regulations of speech that cannot survive strict scrutiny.” *Reed*, 576 U.S. at 159. Indeed, the *Reed* Court explained:

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. . . . On its face, the Sign Code is a content-based regulation of speech.

. . .

Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny [I]t is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tailored to that end.

The Town cannot do so.

Id. at 164-65, 171 (internal citations omitted).

As in *Reed*, the restrictions on political signs imposed by Sec. 6-114 "depend entirely on the communicative content of the sign." *Id.* at 164. For instance, Sec. 6-114(E)(2)(f.) limits the display of signs advertising political events and functions to no more thirty (30) days prior to the event or function, while it imposes no comparable limitation on signs advertising non-political events. Similarly, Sec. 6-114(F)(2) limits the size of political signs to five (5) square feet in sign area, whereas it permits non-political signs located in parcels other than one-family and two-family residences to be considerably larger.

Because the limitations imposed by Sec. 6-114 are manifestly content-based and have no justification, they are in violation of the First Amendment and cannot be applied to Rep. Caruso's supporters without violating the United States Constitution. Consequently, your client must cease and desist from seeking to enforce Sec. 6-114 against Rep. Caruso's supporters, and, specifically, from fining any of Rep. Caruso's supporters for violating the terms of said Sec. 6-114. Should your client insist on seeking to enforce Sec. 6-114 against Rep. Caruso's supporters, we will be forced to pursue other legal action.

If you should need any additional information, do not hesitate to contact me at the email and phone listed above. Rep. Caruso reserves all rights. Please respond immediately that your client will stop enforcement immediately. If not, Rep. Caruso reserves the right to seek and all relief including seeking an injunction for violation of section 1983. Please govern yourselves accordingly.

Sincerely,

/s/

Edward M. Mullins
Partner
Reed Smith LLP
Counsel for Rep. Caruso