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November 3, 2016

Tony Lentych
Executive Director
Traverse City Housing Commission
150 Pine Street
Traverse City, MI 48684
tlentych@tcpa.net

VIA EMAIL AND
FIRST CLASS MAIL

Re: Traverse City Housing Commission Threatened Eviction of Residents
For Political Signs

Dear Mr. Lentych:

We were disturbed to learn that the Traverse City Housing Commission threatened to evict senior citizens and residents with disabilities from Riverview Terrace for simply exercising their First Amendment right to express their political opinion in their own apartments. The housing commission's unconstitutional and heartless acts ignited immediate fear amongst the residents of Riverview Terrace and had a chilling effect on their free speech rights. We urge the commission to rescind the unconstitutional rule banning signs in or on resident dwellings, and assure all residents that it will no longer retaliate against them for exercising their free speech rights. This letter also contains a request for documents under the Michigan Freedom of Information Act.

Facts

As we understand it, on October 31, 2016, Alyssa Kroupa from your office issued eviction notices to 15 residents of Riverview Terrace who were senior citizens and/or individuals with disabilities. The sole reason given for demanding that they vacate their apartments was the fact that they had placed paper pumpkin signs with the message "Yes 3" written on them in their apartment windows. Residents displayed the "Yes 3" signs to express their support for Traverse City's Proposal 3 on the upcoming November ballot, which the Traverse City Housing Commission (TCHC) voted to publicly oppose. (See TCHC Resolution No. 2016-15, October 28, 2016.) Apparently, you did not even issue a warning to the residents about the signs before serving them with eviction notices.

We understand that a TCHC rule explicitly bans placing all signs in or about a resident's dwelling without prior written authorization of the TCHC but that there are no published procedures or criteria to obtain the TCHC's approval. As explained below, the rule is unconstitutional on its face and as applied to facts of this case.

The TCHC Ban on Posting Political Signs is Unconstitutional

In *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), a woman challenged a city ordinance banning residential signs expressing political views after a police officer told her that she was prohibited from putting up a “Peace in the Gulf” sign in the window of her home. The United States Supreme Court, in striking down the ordinance on First Amendment grounds, emphasized the important role residential window signs play in this country’s political process:

[The City of] Ladue has almost completely foreclosed a venerable means of communication that is both unique and important. It has totally foreclosed that medium to political, religious, or personal messages. Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. 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. They may not afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.

Id. at 54-54.

Similarly, the Washington Supreme Court, relying on *Ladue*, held that public housing residents have a First Amendment right to post political signs on their front doors. *Resident Action Council v. Seattle Hous. Auth.*, 174 P.3d 84, 88 (Wash. 2008). In striking down as unconstitutional a housing authority regulation banning door signs, the court recognized the value of freedom of expression in an area over which the tenant maintained control:

[The] rule bans too much speech. The signs in this case may reflect reactions to local events or signal support or opposition to political candidates or laws. They do so in a manner that is inexpensive. Of particular importance here, the signs are unique because “[d]isplaying a sign from one's own residence carries a message quite distinct from placing the same sign someplace else” or by other means. The identity of the resident is an “important component” of this means of communication.

Id. at 88-89 (citations omitted).

TCHC’s rule prohibiting window signs, like the ordinance and regulation at issue in *Ladue* and *Resident Action Council*, bans a valuable means for tenants to express their views in their own residence. Riverview Terrace’s residents’ signs “play an important part in political campaign” over Proposal 3 and are a cheap and convenient form of political speech for individuals with modest means or limited mobility. *Ladue*, 512 U.S. at 56-57. Accordingly, the TCHC rule is unconstitutional on its face.

The rule is also unconstitutional as applied to the facts of this case. We are told that many residents, without prior authorization, have put other items up in their windows -- including holiday decorations, flags, signs of a religious nature -- without being threatened with eviction or

other punishment. Applying regulations in a way that discriminates based on the content of the expression is “presumptively unconstitutional.” *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). The fact that the TCHC rule was applied in such a heavy-handed manner against those who opposed the housing commission position on Proposal 3, and not to other residents, is also evidence that the commission took action in retaliation for the residents’ views – which is a separate violation of the First Amendment. *See, e.g., Hill v. Lappin*, 630 F.3d 468, 473 (6th Cir. 2010) (“[R]etaliatio[n] for the exercise of constitutional rights is itself a violation of the Constitution.”).

Finally, the residents’ leases describing the rule against signs indicate that residents may put up signs if they first obtain permission from TCHC, but there is no indication as to what criteria are used when deciding whether to grant permission. A regulation is unconstitutionally vague if it is an unrestricted delegation of power that leaves the definition of its terms to the officials who enforce it. *Leonardson v. City of East Lansing*, 896 F.2d 190, 196 (6th Cir. 1990). In order to meet constitutional standards, a permitting scheme must contain “narrow, objective, and definite standards to guide the licensing.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969). Because the TCHC rule on signs has no standards and vests unbridled discretion in housing commission employees to decide which messages to allow and which messages to censor, it is an unconstitutional prior restraint on speech. *Id.*

Requested Action

To remedy the violation of your residents’ free speech rights, we urge you to:

1. Refrain from any further action to evict or otherwise discipline residents for placing political signs in the windows of their apartments.
2. Immediately inform the residents of Riverside Terrace that they have a constitutional right to post political signs in their windows.
3. Rescind the your no-signs rule and remove the no-signs provision from your standard lease.
4. Issue an apology to residents of Riverside Terrace whom you threatened with eviction for exercising their constitutional rights to free speech.

Freedom of Information Act Request

Additionally, pursuant to the Michigan Freedom of Information Act (FOIA), M.C.L. § 15.231 *et seq.*, on behalf of the ACLU of Michigan we are requesting copies of all records related to eviction notices served on residents of Riverview Terrace, 150 Pine Street, Traverse City, MI 49684 on or about October 31, 2016. Specifically, please provide:

1. All correspondence – including emails, letters, attachments and enclosures – to and from members of the TCHC or Riverview Terrace management concerning Riverview Terrace residents’ signs in the shape of pumpkins with the message “Yes 3” written on them from October 28, 2016 to present.

2. All TCHC policies, guidelines, or rules regarding the procedure to secure approval from the TCHC of a sign in accordance with Section IX(u) of the Traverse City Housing Commission Residential Lease Agreement, Terms and Conditions.
3. All current TCHC policies, guidelines or rules regarding what criteria the TCHC uses to approve or deny an application for sign approval pursuant to Section IX(u) of the Traverse City Housing Commission Residential Lease Agreement, Terms and Conditions.
4. All applications or requests from Riverview Terrace residents submitted to the TCHC for sign approval pursuant to Section IX(u) of the Traverse City Housing Commission Residential Lease Agreement, Terms and Conditions from January 1, 2016 to present.
5. All documents regarding the TCHC's grant or denial of any application submitted by a Riverview Terrace resident to approve a sign from January 1, 2016 to present.
6. All memoranda, reports, letters or other documents prepared by or for the TCHC outlining the perceived need for a restriction on signs on or in Riverview Terrace dwellings.
7. All minutes of meetings of the TCHC where Proposal 3 of the November 8, 2016 Traverse City ballot was the subject-matter of the meeting or otherwise discussed.
8. All eviction notices given to Riverview Terrace residents by the TCHC from October 28, 2016 to present relating to a resident displaying a pumpkin sign with the message "Yes 3" written on it.
9. All documents given to Riverview Terrace residents from the TCHC warning them about displaying signs on or in their dwelling from October 28, 2016 to present.
10. All documents given to Riverview Terrace residents from the TCHC on November 1, 2016 concerning the residents' compliance with the TCHC's October 31, 2016 30-Day Notices to Quit.

The ACLU requests that you waive or reduce any fee associated with this request as permitted by M.C.L. § 15.234(1). Waiving or reducing the fee is in the public interest because disclosure of the requested public records can be considered as primarily benefiting the general public in its understanding of government activity pertaining to an issue of intense public interest. If this request for waiver of fees is denied and it will cost more than \$50 to process the request please contact the undersigned before proceeding.

Please process and respond to this request pursuant to FOIA requirements, including responding within five business days of receiving this request, by separating exempt from non-exempt material, explaining the basis for any determination that any requested material is exempt from disclosure, and describing any material that is deleted, redacted or withheld. We request that

TCHC, in response to this request, comply with all relevant deadlines and other obligations set forth in FOIA.

To reduce or avoid the costs and labor of printing and/or photocopying records, we request that records be provided in electronic format wherever possible. Emails transmitting less than 10MB of data may be sent to Bonsitu Kitaba (bkitaba@aclumich.org) or arrangements can be made to supply you with a CD, flash drive, or email address capable of handling larger quantities of data.

Finally, if you have any questions about this request, please call Ms. Kitaba at 313-578-6823.

Very truly yours,



Michael J. Steinberg, Legal Director
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Bonsitu Kitaba, Staff Attorney
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cc: VIA EMAIL ONLY

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