No. _____

In The Supreme Court of the United States

CENTRAL RADIO COMPANY INC.,
ROBERT WILSON, AND KELLY DICKINSON,

Petitioners,

v.

CITY OF NORFOLK, VIRGINIA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Central Radio placed a banner on the side of its building protesting government's attempt to take the building by eminent domain. The City of Norfolk quickly cited Central Radio for violating the City's sign code, despite not having enforced the code against any other political sign in at least a quarter-century. Although the sign code prohibited Central Radio's protest banner, it exempts various other categories of signs from regulation. For example, Central Radio's banner would have been allowed if, rather than protesting city policy, it depicted the city crest or flag.

The day after this Court heard argument in *Reed v. Town of Gilbert*, No. 13-502, the Fourth Circuit, over a dissent from Judge Gregory, upheld Norfolk's sign code. Following the approach adopted by the Ninth Circuit in *Reed*, the Fourth Circuit found the challenged provisions content-neutral. Applying intermediate scrutiny to the sign code, it held that Norfolk was justified in restricting Central Radio's banner because some passersby had honked, waved, or shouted in support of it.

The questions presented are:

1. Does Norfolk's mere assertion of a content-neutral justification or lack of discriminatory motive render its facially content-based sign code content-neutral and justify the code's differential treatment of Central Radio's protest banner?

2. Can government restrict a protest sign on private property simply because some passersby honk, wave, or yell in support of its message?

PARTIES TO THE PROCEEDING

Central Radio Company Inc. ("Central Radio"), Robert Wilson, and Kelly Dickinson are the Petitioners and were the appellants in the U.S. Court of Appeals for the Fourth Circuit. The City of Norfolk, Virginia, is the Respondent and was the appellee in the Fourth Circuit.

CORPORATE DISCLOSURE STATEMENT

Central Radio has no parent corporation and no publicly-held company has a 10% or greater ownership interest in it.

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INTRODUCTION

This case presents the same question as *Reed v. Town of Gilbert,* No. 13-502: Is a municipal sign code that discriminates between signs on the basis of their content nonetheless content-neutral for purposes of First Amendment analysis simply because the government disclaims a discriminatory motive or proffers a content-neutral justification?

The City of Norfolk prohibited Central Radio from displaying a large banner protesting eminent domain on the side of its building – the same building the government was trying to take by eminent domain. Perversely, Norfolk's sign code would have allowed a banner of the same size, in the same location, if, rather than protesting governmental policy, it depicted a governmental flag or crest.

The Virginia Supreme Court eventually vindicated Central Radio's property rights, holding unanimously that the taking of its property was illegal. But over a powerful dissent from Judge Gregory, the Fourth Circuit refused to vindicate Central Radio's free speech rights. It held Norfolk's sign code content-neutral and concluded that restricting Central Radio's banner was justified by the fact that some passersby had honked, waved, or shouted in support of it – evidence, according to the Fourth Circuit, that drivers were dangerously distracted by the banner.

Central Radio now petitions for certiorari. This Court should hold its petition pending a decision in *Reed*, in which the Court is reviewing the Ninth

Circuit's approach to assessing whether a sign code is content-neutral. That approach, which focuses on governmental motive rather than the text of the code, is the same approach the Fourth Circuit used here.

If this Court concludes in *Reed* that the Ninth Circuit's approach to assessing content neutrality is incorrect, then a grant of certiorari, vacatur, and remand will be warranted in this case. If, however, this Court does not fully resolve that issue in *Reed*, then this Court should grant certiorari to resolve it here. Finally, even if this Court concludes that the Ninth Circuit's approach is correct, certiorari will still be warranted in this case to resolve the equally important question of whether government may restrict a political protest sign on private property simply because some passersby honk, wave, or shout in support of it.

OPINIONS BELOW

The opinion of the court of appeals is reported at 776 F.3d 229 and reproduced in the Appendix ("App.") at App. 1-27. The opinion of the district court is unreported; it is reproduced at App. 28-49.

JURISDICTION

The court of appeals entered its opinion and judgment on January 13, 2015. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The First Amendment to the United States Constitution, incorporated against the states and their municipalities through the Fourteenth Amendment, provides that "Congress shall make no law . . . abridging the freedom of speech." The relevant portions of the Code of the City of Norfolk, Virginia, as they read at the time of the events in this case, are reproduced at App. 50-66.[1]

STATEMENT OF THE CASE

A. Central Radio's Attempt To Protest Eminent Domain

Central Radio has been building and servicing radio equipment in Norfolk since 1934. For the past 53 years, it has been located on 39th Street and

[1] Norfolk made several amendments to its sign code in November 2014, shortly before the Fourth Circuit issued its opinion. The Appendix contains the version applied to Central Radio and addressed by the Fourth Circuit.

Hampton Boulevard – a location it chose for its proximity to the Norfolk naval base, one of Central Radio's customers. *See* App. 6, 31.

In 1998, however, the Norfolk City Council enacted a redevelopment plan that granted the Norfolk Redevelopment and Housing Authority ("NRHA") the power to take Central Radio's property and those of its neighbors. The NRHA is a chartered political subdivision created and appointed by the Norfolk City Council. App. 5. The plan called on the NRHA to transfer the properties it acquired to the Old Dominion University Real Estate Foundation ("ODU"), which intended to use the land to build restaurants and retail shops. App. 5, 31-32; *see also PKO Ventures, LLC v. Norfolk Redevelopment & Hous. Auth.*, 747 S.E.2d 826, 828-29 (Va. 2013).

Several years later, the NRHA informed Central Radio that it would take the company's property by agreement or eminent domain. App. 5, 31. Central Radio had no desire to move, so it fought back in court. But in February 2011, a state trial court ruled the NRHA could condemn the properties of Central Radio and other nearby owners. App. 5, 31.

While waiting for the Virginia Supreme Court to review that decision, Petitioners Robert ("Bob") Wilson and Kelly Dickinson, both officers of Central Radio, decided that putting public pressure on Norfolk might be the only way to save the company's property. They decided to speak out in the most direct

way possible: by putting a protest banner on the very building the NRHA was trying to seize. App. 6, 31-32.

On March 23, 2012, Bob and Kelly hung this 375-square-foot vinyl banner on the side of Central Radio's building:

App. 6, 27, 67, 68. They hung the banner facing Hampton Boulevard, a highway with significant traffic; there, it would be seen by thousands of people every day, including City officials. App. 6, 17, 32. By contrast, the front of Central Radio's building faces 39th Street – a quiet street with few cars and pedestrians. App. 31. Bob and Kelly chose a 375-square-foot banner not only to ensure their message would be legible from the highway, which is 150 feet from Central Radio's building, but also because they wanted their protest to be a "shout," not a "whisper." App. 6; *see also* App. 17, 31.

The banner had an immediate impact. Central Radio received supportive calls and emails, and

strangers stopped in to offer help. Passersby honked, waved, or shouted approvingly when they saw the banner. App. 15, 32. The Virginia Attorney General even held a press conference on the company's property to promote a state constitutional amendment restricting the use of eminent domain. Mem. in Supp. Pls.' Mot. Summ. J. 4 (ECF No. 44-1 at 4).

B. The Complaint From ODU And The City's Citation Of Central Radio

Like everyone else in the city who traveled past Central Radio's building, ODU officials soon saw the banner. They were not pleased. They were concerned about the banner's message and how it (and they) would be received in the media. *See* Frommer Decl. in Supp. Pls.' Mot. Summ. J. (hereinafter Frommer Decl.) Ex. CC, at 1 (ECF No. 44-32 at 2) (email from T. Saunders).

Accordingly, a high-ranking official from ODU – the very entity for which the NRHA was trying to seize Central Radio's property – complained about the banner to a Norfolk development official. App. 6, 32. He, in turn, informed the City's Planning Department, and the department's director quickly ordered inspectors to commence enforcement against Central Radio. App. 6-7, 32-33.

On April 5, 2012, inspectors issued Central Radio two citations: one, for installing the banner without a permit; the other, for displaying an oversized sign. App. 7. Despite having worked for Norfolk since 1987,

the City's chief inspector testified that she was unaware of the City's ever having issued a citation, or even a warning, for any other protest or political sign. Supplemental Frommer Decl. in Supp. Pls.' Mem. in Opp'n Defs.' Mot. Summ. J. (hereinafter Suppl. Frommer Decl.) Ex. UU, at 86:7-20 (ECF No. 53-4 at 82-83) (deposition testimony of L. Garrett).

Code enforcement in Norfolk is entirely "complaint-driven" – that is, the City will only enforce the sign code if someone complains. App. 30; *see also* App. 4-5. In the case of Central Radio's banner, nobody other than ODU complained. *See* Suppl. Frommer Decl. Ex. TT, at 166:13-15 (ECF No. 53-3 at 167) (deposition testimony of L. Newcomb).

C. Norfolk's Sign Code

Norfolk's sign code defines the term "sign" broadly and requires persons wishing to display a sign to obtain a sign certificate from the City. *See* Norfolk, Va., Code app. A, § 2-3 (App. 50-51); *id.* § 16-5.1 (App. 54). In the "I-1" industrial zone where Central Radio is located, the sign code imposes size restrictions that vary depending on whether a sign is categorized as: a "temporary sign," which may be as large as 60 square feet; a "freestanding sign," which may be as large as 75 square feet; or an "other than freestanding sign," which may be as many square feet as the number of linear feet of building frontage facing a public street.

App. 4; *see also* Norfolk, Va., Code app. A, § 16-8.3 (App. 63-64).[2]

Norfolk treated Central Radio's banner as a temporary sign restricted to 60 square feet, which is 84 percent smaller than the banner itself. App. 7 n.3, 32-33. To comply with that restriction, Central Radio would have had to either drastically reduce the font size of the banner to the point where it would have been illegible from the road or change the content of the banner.

In fact, when Central Radio covered all but 60 square feet of the banner with a tarp in order to comply with the sign code, it barely had enough room to expose the no-eminent-domain-abuse symbol in the lower right hand corner of the banner:

[2] For Central Radio's building, an "other than freestanding sign" would have been limited to 40 square feet and could not have been displayed on the side of its building facing Hampton Boulevard. App. 7 n.3; *see also* Norfolk, Va., Code app. A, § 16-6.8(c) (App. 61); *id.* § 16-3 (definition of "building frontage") (App. 52-53). A freestanding sign was not an option because of fire exit and landscaping requirements. *See* App. 30; Norfolk, Va., Code app. A, § 16-6.9 (App. 61); Suppl. Frommer Decl. Ex. SS, at 143:12-144:10 (ECF No. 53-2 at 144-45) (deposition testimony of F. Duke).

App. 33-34; Frommer Decl. Ex. FF, at 1 (ECF No. 44-35 at 2). It was unable to display the remainder of the banner, including its message that Central Radio's "50 years on this street," "78 years in Norfolk," and "100 workers" were "threatened by eminent domain."

Although Norfolk's sign code severely restricted Central Radio's banner, it exempts a number of other types of signs, defined by content, from some or all of the code's restrictions. *E.g.*, Norfolk, Va., Code app. A, § 16-5.2 (App. 54-58). In fact, some items are exempted from the definition of "sign" itself, leaving them entirely unregulated and, therefore, not subject to the permit requirement or size restriction imposed on Central Radio's banner. They include "the flag or emblem of any nation, organization of nations, state,

city, or any religious organization," as well as "works of art." *Id.* § 2-3 (App. 51); *see also* App. 4.[3]

One of the sign code's drafters testified that the code exempts government flags because "we believe that's the right thing to do." App. 26 n.*. When asked to explain why the law allowed an American flag of unlimited size but strictly limited the size of a Washington Redskins flag, he replied, "I think we consider the importance of an American flag or a state flag to far exceed that of an enthusiastic sports flag." App. 26 n.*.

As for the "work of art" exemption, the sign code does not define that term or explain what constitutes "art." The record, however, provides some insight. Norfolk's Planning Director testified that "if Central Radio wanted to cover the side of their building . . . with a copy of the U.S. Constitution," then, "[p]otentially, that could be construed as art, in which case it would be exempt from the sign regulations." Suppl. Frommer Decl. Ex. SS, at 101:4-10 (ECF No. 53-2 at 102) (deposition testimony of F. Duke). But Central Radio's banner protesting a violation of the Constitution was not exempt.

[3] The November 2014 amendments removed "or any religious organization" from the first exemption. Norfolk, Va., Ordinance 45,769 § 1 & Ex. A (Nov. 25, 2014). The governmental flag and emblem components of the exemption remain in place.

D. Norfolk's Allowance Of Other Oversized And Noncompliant Signs

Despite Norfolk's decision to restrict Central Radio's banner to 60 square feet, it ignored many other oversized signs throughout the city, including signs that were just as large, if not larger, than Central Radio's. For example, the Nauticus museum has a massive flashing message board larger than the sign code allows. App. 18 n.7, 33, 45. Norfolk's Planning Director testified that he allowed this sign to remain because "the then city manager directed that I ignore it." Suppl. Frommer Decl. Ex. SS, at 167:23-24 (ECF No. 53-2 at 168) (deposition testimony of F. Duke).

Some of these oversized signs were on the City's own buildings. App. 33. After Central Radio filed this lawsuit, the Planning Director began addressing these City-owned signs. App. 33. He explained why in an email to City staff and in his deposition. The City "need[s] to be sure that what they're putting up is in compliance with city code because people are watching," he explained; "[t]he plaintiffs are noting the City's failure to comply with its own regulations." Suppl. Frommer Decl. Ex. SS, at 163:3-5 (ECF No. 53-2 at 164) (deposition testimony of F. Duke); Frommer Decl. Ex. BB, at 1 (ECF No. 44-31 at 2) (email from F. Duke).

The City commonly ignored violations of other sign regulations in addition to the size restrictions. For example, approximately three years ago, the City

Attorney's office directed the Planning Department to cease prosecuting the signs of an abortion protestor, despite the fact that they violated a public-right-of-way provision of the City Code. App. 46; Norfolk, Va., Code § 42-10(b) (App. 50); Suppl. Frommer Decl. Ex. UU, at 25:9-29:24 (ECF No. 53-4 at 25-29) (deposition testimony of L. Garrett). And ten days after Election Day in 2012, the Planning Director directed an inspector to ignore a sign urging President Obama's defeat, even though the sign code requires that campaign signs be removed three days after the election. App. 45; Norfolk, Va., Code app. A, § 16-6.16 (App. 62); Suppl. Frommer Decl. Ex. UU, at 87:16-89:24 (ECF No. 53-4 at 83-86) (deposition testimony of L. Garrett).

E. Central Radio Challenges, And The District Court Upholds, The Sign Code Provisions

On May 2, 2012, Central Radio, Bob Wilson, and Kelly Dickinson filed the present lawsuit against Norfolk. App. 7, 33. Their amended complaint, brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202, asserted facial and as-applied claims that Norfolk's sign-code provisions violate the right to free speech protected by the First Amendment. App. 9; Am. Compl. ¶ 6 (ECF No. 39 at 3). They sought declaratory and injunctive relief, as well as one dollar in nominal damages. *Id*. at 23 ¶¶ A-C (ECF No. 39 at 23). The district court's jurisdiction was invoked under 28 U.S.C. §§ 1331, 1343, and 2202 because of

the federal constitutional nature of the claims at issue. *Id.* ¶ 7 (ECF No. 39 at 3).

On May 4, 2012, the district court denied a temporary restraining order and on July 27, after an evidentiary hearing, denied a preliminary injunction. App. 33. Following discovery, the parties cross-moved for summary judgment. On May 15, 2013, the district court denied Central Radio's motion, granted Norfolk's, and entered judgment. App. 49.

The district court acknowledged that Norfolk's sign code "distinguishes government or religious flags or emblems and murals or works of art, and creates different categories of temporary signs," but it nonetheless held the code content-neutral. App. 40. If a law distinguishes speech based on content, it reasoned, the law is nevertheless content-neutral if the government proffers a content-neutral *justification* for the differential treatment. "The Fourth Circuit," the court noted, "has held that a regulation that 'facially discriminates between types of speech' is content-neutral if the distinction is 'justified without reference to the content of regulated speech.'" App. 40 (quoting *Brown v. Town of Cary*, 706 F.3d 294, 303 (4th Cir. 2013)). The court concluded that Norfolk's sign code had justifications – traffic safety and aesthetics – that were unrelated to content. App. 40.

Applying intermediate scrutiny to the code, the court upheld it. The court noted that "[t]he Fourth Circuit has held that [traffic safety and aesthetics] are substantial government interests that are furthered by sign regulations." App. 42. Although it

acknowledged that Central Radio had "presented some evidence suggesting that signs like theirs pose no threat to traffic safety," it held that "this evidence is insufficient to render the City's conclusion to the contrary unreasonable." App. 43. The court also asserted that "there is evidence that some drivers have been distracted by Central Radio's banner," but the only evidence it cited was the statement by Bob Wilson that some passersby "honk their horns, yell things in support to us, wave" when they see the banner. App. 43 (citing ECF No. 44-43 at 22 (preliminary injunction hearing testimony of Robert Wilson)). Regarding the requirement that content-neutral regulations leave open adequate alternative channels for a speaker's message, the district court simply concluded that the "ability to display signs up to sixty square feet provides Central Radio with 'ample alternative channels of communication.'" App. 44.

F. The Virginia Supreme Court Vindicates Central Radio's Property Rights

While the free speech action in the district court was pending, the underlying eminent domain action was still being litigated in state court. During that entire period – the most critical juncture in the fight to protect its property – Central Radio was prevented from displaying its banner. Fortunately, the Virginia Supreme Court ultimately vindicated Central Radio's property rights. On September 12, 2013, it ruled that the NRHA could not seize Central Radio's property. App. 5-6; *see also PKO Ventures*, 747 S.E.2d at 833.

G. The Fourth Circuit Affirms The District Court

On January 13, 2015, the day after this Court heard argument in *Reed v. Town of Gilbert*, No. 13-502, the Fourth Circuit affirmed the district court over a vigorous dissent by Judge Roger Gregory. The majority began by assessing the sign code's content neutrality. "'The government's purpose is the controlling consideration'" in determining whether a law is content-neutral, the court explained, App. 9 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)), and a sign code's distinction between different types of signs "'is only content-based if it distinguishes content with a censorial intent.'" App. 10 (quoting *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 556 (4th Cir. 2013)). Applying these principles, the court concluded that Norfolk's sign code was content-neutral, App. 14, despite the fact that it made what the court called "content distinctions." App. 11, 12.

Applying intermediate scrutiny, the majority, like the district court, concluded that Norfolk had substantial interests in traffic safety and aesthetics. It then asserted that "the record contains evidence that Central Radio's banner affected those interests." App. 15. But apart from the fact that the banner was large, the only evidence it cited was "testimony . . . that passing motorists reacted to the banner by 'honk[ing] their horns,' 'yell[ing] things in support,' and 'wav[ing].'" App. 15 (alteration in original) (quoting preliminary injunction testimony of Robert Wilson).

Despite Central Radio's argument that speech may not be restricted based on its persuasive effect or audience reaction,[4] the court held that the "fact that passing motorists reacted emphatically to Central Radio's banner . . . constitutes evidence that the banner contributed to . . . 'distractions, obstructions and hazards to pedestrian and auto traffic.'" App. 15-16 n.6 (quoting Norfolk, Va., Code app. A, § 16-1 (App. 51)).

The court also concluded that the sign code left open ample alternative channels of communication "by generally permitting the display of signs 'subject only to size and location restrictions.'" App. 16 (quoting *Wag More Dogs v. Cozart*, 680 F.3d 359, 369 (4th Cir. 2012)). Regarding Central Radio's argument that the banner's message was so intertwined with its location that the message could not be effectively conveyed elsewhere, and that complying with the 60-square-foot limit would either require it to change the content of the banner or render the banner entirely illegible to motorists,[5] the court merely asserted that "the plaintiffs do not have a constitutional right to place their sign in the location and manner that they deem most desirable." App. 17.

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[4] *See* Corrected Br. of Appellants/Cross-Appellees 36-37; *see also* Resp. & Reply Br. of Appellants/Cross-Appellees 41-42.

[5] *See* Corrected Br. of Appellants/Cross-Appellees 40-42; *see also* Resp. & Reply Br. of Appellants/Cross-Appellees 44-45.

Judge Gregory dissented, arguing that even under the Fourth Circuit's approach to assessing content neutrality, Norfolk's sign code was content-based. App. 23-27. "In a case like this, involving political speech against the heaviest hand of government attempting to seize its citizen's land," he explained, "we must ensure a 'reasonable fit' between the City's asserted interests in aesthetics and traffic safety, and the Code's exemptions for government and religious emblems and flags." App. 24. Judge Gregory found no such fit. Rather, he found a "regulatory scheme [that] perpetually disadvantages dissidents like Central Radio." App. 25. "The danger," he explained, "is not that the City has 'indicated any preference for a particular governmental or religious speaker or message,' but that it declines to regulate entirely and therefore favors *all* official government and religious speakers and speech." App. 25 (citation omitted) (quoting majority opinion).

REASONS FOR GRANTING THE PETITION

This petition presents two separate, but equally important, questions of First Amendment law. The first is a recurring question concerning one of "the central organizing concept[s] of First Amendment doctrine": the "distinction between content-based regulations and content-neutral ones." Mark Tushnet, *The Supreme Court and its First Amendment Constituency*, 44 Hastings L.J. 881, 882 (1993). Specifically, this case asks whether a municipal sign ordinance

that makes content-based distinctions on its face is content-based, regardless of the governmental motive and proffered justification for the ordinance.

This Court may well resolve that question when it decides *Reed v. Town of Gilbert*, No. 13-502, in which it granted certiorari to review the Ninth Circuit's approach to the content-neutral versus content-based inquiry. The Fourth Circuit follows the same approach as the Ninth Circuit and applied it in finding Norfolk's sign code provisions content-neutral and upholding them. Accordingly, this Court should hold Central Radio's petition and, if the decision in *Reed* calls into question the analysis of the Fourth Circuit below, issue an order granting certiorari, vacating the Fourth Circuit's decision, and remanding the case to allow the Fourth Circuit to reconsider its decision in light of this Court's opinion.

If, for some reason, this Court does not resolve the question it granted certiorari to resolve in *Reed*, then this case would present an excellent vehicle for resolving it and a grant of certiorari would still be warranted. The Fourth Circuit's decision, after all, not only compounds the extant circuit conflict over how to assess a sign ordinance's content neutrality, but also creates an even more specific split with *Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728 (8th Cir. 2011), in which the Eighth Circuit held that nearly identical sign code provisions, used to restrict a remarkably similar sign protesting eminent domain abuse, were content-based and unconstitutional.

Finally, even if this Court affirms the approach to content neutrality adopted by the Ninth Circuit in *Reed*, as well as by the Fourth Circuit in this case, certiorari *still* would be warranted in this case to resolve the second of the two questions presented: whether government may restrict a political protest sign on private property simply because some passersby find it persuasive and honk, wave, or shout in support. The Fourth Circuit's holding that Central Radio's banner could be restricted because "passing motorists reacted emphatically" in this way contravenes this Court's longstanding holding that speech may not be restricted because of its persuasive effect or audience reaction. *See, e.g.*, *R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 & n.7 (1992). It also creates a split with another lower federal court over the constitutionality of restricting political protest signs based on the fact that passersby honk in support. And it creates a perverse jurisprudential state of affairs in which effective speech – that is, speech that causes someone to express support for the speaker – is the easiest speech for government to ban.

I. This Court's Review Is Needed To Resolve Whether A Sign Code That, On Its Face, Differentiates Based On Content Is Nevertheless Content-Neutral Simply Because The Government Disclaims A Censorial Motive Or Proffers A Content-Neutral Justification

This Court's review is needed to resolve a longstanding, deep division among the courts of

appeals over an important and recurring question of First Amendment law: whether a sign code that, on its face, draws content-based distinctions is nevertheless content-neutral simply because the government disclaims a censorial motive or proffers a content-neutral justification for the code. That question has confounded the lower courts ever since this Court's sharply fractured decision in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), failed to yield an answer. As early as 1994, then-Judge Alito noted this confusion and the need for "the Supreme Court [to] provide[ ] further guidance." *Rappa v. New Castle Cnty.*, 18 F.3d 1043, 1080 (3d Cir. 1994) (Alito, J., concurring). Then-Professor Kagan similarly observed that this issue is "calling for acknowledgment by the Court and an effort to devise a uniform approach." Elena Kagan, *The Changing Faces of First Amendment Neutrality:* R.A.V. v. St. Paul, Rust v. Sullivan, *and the Problem of Content-Based Underinclusion*, 1992 Sup. Ct. Rev. 29, 77 (1992).

If this Court resolves this issue in *Reed v. Town of Gilbert* and does so in a way that calls into question the Ninth Circuit's approach to assessing content neutrality – the same approach the Fourth Circuit followed in this case – then an order granting certiorari, vacating the Fourth Circuit's decision, and remanding this case will be warranted. If, on the other hand, this Court does not resolve the issue in *Reed*, it should grant certiorari to resolve it now.

A. There Is A Sharp Split Among The Circuits Over How To Assess Municipal Sign Codes That Draw Content-Based Distinctions On Their Face

There is a sharp, three-way conflict among the courts of appeals over how to analyze a municipal sign code for content discrimination. In this case, the Fourth Circuit followed the approach that the Sixth and Ninth Circuits also follow. It has been described as a "motive-based" approach. Under it, a sign ordinance is deemed content-neutral so long as it is not the product of censorial motive and so long as the government proffers some content-neutral justification, or purpose, for the ordinance. The Fourth Circuit summarized this approach below, noting that the "'government's purpose is the controlling consideration,'" App. 9 (quoting *Ward*, 491 U.S. at 791), and that differential treatment of signs in a sign code "'is only content-based if it distinguishes content with a censorial intent.'" App. 10 (quoting *Clatterbuck*, 708 F.3d at 556); *see also Reed v. Town of Gilbert*, 707 F.3d 1057, 1071-72 (9th Cir. 2013); *H.D.V.-Greektown, LLC v. City of Detroit*, 568 F.3d 609, 621-23 (6th Cir. 2009).

In contrast, the First, Second, Eighth, and Eleventh Circuits apply what has been described as a "text-based" approach. These courts treat sign ordinances that, on their face, differentiate speech based on content as content-based and, therefore, presumptively unconstitutional. They do so regardless of the government's proffered justification and regardless of

the presence or absence of evidence of censorial motive.

The Eighth Circuit's decision in *Neighborhood Enterprises* is illustrative of this approach. A sign regulation is content-based, that court held, so long as "'the message conveyed determines whether the speech is subject to the restriction.'" *Neighborhood Enters.*, 644 F.3d at 736 (quoting *Whitton v. City of Gladstone*, 54 F.3d 1400, 1403-04 (8th Cir. 1995)). It is irrelevant that the government proffers a content-neutral purpose or justification if the regulation itself does not "'*accomplish[]* the stated purpose in a content-neutral manner.'" *Id.* at 737 (quoting *Whitton*, 54 F.3d at 1406); *see also Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1259-62 (11th Cir. 2005); *Nat'l Adver. Co. v. Town of Babylon*, 900 F.2d 551, 556-57 (2d Cir. 1990); *Matthews v. Town of Needham*, 764 F.2d 58, 59-60 (1st Cir. 1985).

The Third Circuit, meanwhile, follows what it calls a "context sensitive" approach. It recognizes that sign code exemptions based on content are content-based, but it generally allows such exemptions if (1) there is a significant relationship between the content of the signs allowed by the exemption and the specific location where the exemption applies; (2) the exemption is substantially related to serving an interest that is at least as important as that served by the underlying sign regulation; and (3) the municipality did not include the exemption in order to censor certain viewpoints or control what issues are

appropriate for public debate. *See Rappa*, 18 F.3d at 1062-66.

This split is widely recognized, and it is presumably what led this Court to grant certiorari to review the Ninth Circuit's decision in *Reed v. Town of Gilbert*. The Fourth Circuit has firmly staked out its position, alongside the Ninth Circuit, on the wrong side of the split.[6]

B. This Court Should Hold Central Radio's Petition Pending A Decision In *Reed*, Which May Resolve This Circuit Split

This Court may well resolve the split over the definition of content-neutrality when it decides *Reed*. Accordingly, holding Central Radio's petition pending a decision in *Reed* is appropriate. The Court, after all, may hold a petition for certiorari when a case already pending on the merits raises issues similar or identical to issues raised in the petition. *See* Stephen M. Shapiro et al., *Supreme Court Practice* § 5.9 (10th ed. 2013).

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[6] Although, in *Reed*, the Town of Gilbert insisted that the approach of the Fourth, Sixth, and Ninth Circuits does not turn *entirely* on motive, it readily acknowledged that their approach is "markedly different" than that of those circuits that apply what it called the "rigid" or "formulaic" text-based approach to content-neutrality. Resp'ts' Br., *Reed v. Town of Gilbert*, No. 13-502, at 20.

If *Reed*, in fact, resolves the split, and if it reverses or otherwise calls into question the Ninth Circuit's approach to assessing content neutrality, then an order granting certiorari, vacating the Fourth Circuit's decision, and remanding this case will be warranted. Such a course is appropriate when there is "a reasonable probability" that the lower court in a held case would resolve that case differently "if given the opportunity for further consideration" in light of this Court's decision in the case that prompted the hold. *See Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam).

C. If This Court Does Not Resolve The Content-Neutrality Issue In *Reed*, It Should Grant Certiorari To Resolve It Here

If, on the other hand, this Court does not resolve the question it granted certiorari to resolve in *Reed*, then it should grant certiorari to resolve it in this case. In fact, this case is an even better vehicle for doing so. The Fourth Circuit's decision, after all, did not simply compound the extant circuit split; it also sharpened it. It created a more precise conflict with the Eighth Circuit's decision in *Neighborhood Enterprises v. City of St. Louis*, which held that virtually identical sign code provisions, applied to an almost identically-sized sign that protested exactly the same kind of governmental abuse, were impermissibly content-based.

In this case, the Fourth Circuit applied its motive-based approach to Norfolk's sign code – the text of which severely restricted Central Radio's banner but exempted from *all* regulation such things as "the flag or emblem of any nation, organization of nations, state, city, or any religious organization," as well as "works of art," App. 4, 51 – and concluded that the code was content-neutral. App. 9-14. To be clear, the court readily acknowledged that the sign code made "content distinctions," App. 11, 12, but it insisted that the code was content-neutral because of a supposed absence of censorial motive on Norfolk's part.[7] "These exemptions do not differentiate between content based on the 'ideas or views expressed,'" the court explained, and "the City has not indicated any preference for a particular governmental or religious speaker or message" or "favored certain artistic messages over others." App. 14 (quoting *Covenant*

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[7] As Judge Gregory noted in dissent, the majority's claim of a non-censorial motive was betrayed by the record:

> [T]he City has not adequately demonstrated that its adoption of the Code and its exemptions was unrelated to disagreement with a particular message. . . .
>
> . . . .
>
> In fact, one of the drafters of the Code revealed in his deposition: "Why do we create exemptions for government flags, is that what you're asking? Because I believe we believe that's the right thing to do. . . . I think we consider the importance of an American flag or a state flag to far exceed that of an enthusiastic sports flag."

App. 25, 26 & n.* (third omission in original).

Media of S.C., LLC v. City of N. Charleston, 493 F.3d 421, 434 (4th Cir. 2007)).

In *Neighborhood Enterprises*, on the other hand, the Eighth Circuit, applying its text-based approach, concluded that virtually identical sign code provisions, applied to a remarkably similar sign, were content-based and unconstitutional. There, as here, the city cited a property owner who placed a 363-square-foot sign on the side of a building threatened with eminent domain. *Neighborhood Enters.*, 644 F.3d at 731. There, as here, the sign protested the government's use of eminent domain and was visible from nearby highways. *Id.* There, as here, the city cited the property owner for exceeding the maximum allowable size for such a sign, which was far smaller (30 square feet) than the property owner's sign. *Id.* at 731-32. And there, as here, the city's sign code exempted, from all regulation, certain types of signs defined by content, including: (1) "[f]lags of nations, states[,] . . . cities . . . [and] religious . . . organization[s]"; (2) "[n]ational, state, [and] religious . . . symbols or crests"; and (3) "[w]orks of art." *Id.* at 739.

Unlike here, however, the Eighth Circuit concluded that these exemptions (and, thus, the underlying restrictions) were content-based. *Id.* at 736. The court held that a sign regulation is content-based if "'the message conveyed determines whether the speech is subject to the restriction,'" *id.* at 736 (quoting *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993)) – that is, if it makes "'distinctions based *solely* on the content or message conveyed

by the sign.'" *Id.* at 737 (quoting *Whitton*, 54 F.3d at 1404). St. Louis's sign code (like Norfolk's) did exactly that. As the court explained, "an object of the same dimensions as [the property owner's] 'End Eminent Domain Abuse' sign . . . would not be subject to regulation if it were a '[n]ational, state, [or] religious . . . symbol[ ] or crest[ ].'" *Id.* at 736-37 (second, fourth, and fifth alterations in original). The court accordingly applied strict scrutiny and held the sign code provisions unconstitutional.

In short, the law is in such disarray that two sister circuits, attempting to apply this Court's precedent to virtually identical facts, came to wildly different conclusions. The more troubling side of this fact is that the free speech rights of the citizens of those municipalities are also meeting wildly different fates. In the Second, Eighth, and Eleventh Circuits, cities must treat signs protesting government policy as they would signs bearing a government flag or crest. *See Clear Channel Outdoor, Inc. v. Town Bd.*, 352 F. Supp. 2d 297, 301, 309-10 (N.D.N.Y. 2005); *Neighborhood Enters.*, 644 F.3d at 736-37; *Solantic*, 410 F.3d at 1257, 1264, 1268-69. But in the Fourth, Sixth, and, presumably, Ninth Circuits, a city may – as Norfolk does – severely restrict signs protesting government policy while allowing the entirely unregulated display of those bearing pro-government symbols. App. 12-14, 17; *H.D.V.-Greektown*, 568 F.3d at 622-23. Such disparity in free speech protections is not acceptable. The Court should accept this case to resolve it.

In addition to bringing the extant circuit split into sharper focus, this case also brings into sharper focus the mischief of content distinctions in sign codes. As Judge Gregory explained in his dissent, Norfolk's "regulatory scheme perpetually disadvantages dissidents like Central Radio" by severely restricting "political speech against the heaviest hand of government," while "declin[ing] to regulate entirely and therefore favor[ing] *all* official government . . . speakers and speech." App. 24, 25 (Gregory, J., dissenting); *see also R.A.V.*, 505 U.S. at 384 (explaining city could not enact ordinance "prohibiting only . . . works that contain criticism of the city government or . . . that do not include endorsement of the city government").

Finally, as Judge Gregory also emphasized, "[t]his case implicates some of the most important values at the heart of our democracy: political speech challenging the government's seizure of private property – exactly the kind of taking that our Fifth Amendment protects against." App. 26 (Gregory, J., dissenting). Although this Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), adopted an expansive interpretation of the government's takings power, it also recognized that the "necessity and wisdom of using eminent domain" are "matters of legitimate public debate." *Id.* at 489. With its banner, Central Radio attempted to participate in that debate; with its sign code, Norfolk prevented Central Radio from doing so. "If a citizen cannot speak out against the king taking her land," Judge Gregory

warned, "we abandon a core protection of our Constitution's First Amendment." App. 26-27 (Gregory, J., dissenting).

In short, this case presents an even better vehicle for resolving the existing circuit split than *Reed* itself. If the Court does not resolve the split in *Reed*, it should grant certiorari to resolve it in this case.

II. This Court's Review Is Needed To Resolve Whether Government May Restrict A Political Protest Sign On Private Property Based On The Reactions Of Those Who See It

Even if *Reed* resolves the circuit split discussed above and *endorses* the approach that the Ninth and Fourth Circuits follow in assessing content-neutrality, certiorari will still be warranted in this case to resolve a separate, but no less important, question: whether government may restrict a political protest sign on private property simply because some passersby honk, wave, or shout in support. In concluding that it may, the Fourth Circuit contravened this Court's repeated holding that speech may *not* be restricted based on its persuasive force or audience reaction. *See, e.g.*, *R.A.V.*, 505 U.S. at 394 & n.7; *Sorrell v. IMS Health Inc.*, ___ U.S. ___, 131 S. Ct. 2653, 2670 (2011); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 789-90 (1978).

The Fourth Circuit's decision, moreover, creates a split with another lower federal court over the constitutionality of restricting political speech that

engenders horn-honking. In *Goedert v. City of Ferndale*, 596 F. Supp. 2d 1027 (E.D. Mich. 2008), the Eastern District of Michigan held it unconstitutional for government to restrict political protest signs based on the fact that some passersby had honked in support of them.

Finally, this issue is one of profound constitutional importance. If left to stand, the Fourth Circuit's decision will render effective political speech – that is, speech that persuades the citizenry and engenders a supportive reaction – the *easiest* speech for government to suppress. Central Radio designed its banner and placed it at this particular location precisely for the impact that it would have on the citizens it was trying to persuade. Yet the fact that the banner was successful in that regard is the very reason the Fourth Circuit allowed Norfolk to restrict it.

A. This Court Has Repeatedly Held That Speech May Not Be Restricted Based On Audience Reaction

In contexts as diverse as pharmaceutical advertisement, campaign finance, and bias-motivated crime, this Court has repeatedly held that the persuasive effect of speech, and audience reaction to it, are impermissible bases for restricting speech. For example, in *R.A.V. v. City of St. Paul*, the Court held unconstitutional a municipal ordinance that prohibited displays that were likely to "'arouse[ ] anger,

alarm or resentment in others on the basis of,'" among other things, race. *R.A.V.*, 505 U.S. at 380 (quoting St. Paul, Minn., Legis. Code § 292.02 (1990)). The government had argued that the ordinance was aimed not at the prohibited speech itself, but rather at a secondary effect of such speech: the victimization of vulnerable, historically-discriminated groups. *Id.* at 394. This Court squarely rejected that argument, holding that the "'emotive impact of speech on its audience'" and "'[l]isteners' reactions'" are not secondary effects. *Id.* (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988)). To the contrary, the "persuasive (or repellant) force" of speech is its "'primary' effect," and speech may not be regulated on that basis. *Id.* at 394 n.7; *see also Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992) ("Listeners' reaction to speech is not a content-neutral basis for regulation.").

Similarly, in *Sorrell v. IMS Health*, the Court held a law restricting certain pharmaceutical marketing practices unconstitutional. The government had argued that the law was needed to prevent improper influence on doctors' treatment decisions. *IMS Health*, 131 S. Ct. at 2670. The Court rejected the argument as "contrary to basic First Amendment principles." *Id.* "If pharmaceutical marketing affects treatment decisions," the Court noted, "it does so because doctors find it persuasive," and "the fear that speech might persuade provides no lawful basis for quieting it." *Id.*

And in *First National Bank of Boston v. Bellotti*, this Court again held unconstitutional a law barring

banks and corporations from making expenditures to influence referendum votes. The government argued that the law was properly aimed at preventing "undue influence on the outcome of a referendum vote." *Bellotti*, 435 U.S. at 789. The Court, however, held that this was not a valid basis for restricting speech. "To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose," the Court noted. *Id*. at 790. "But the fact that advocacy may persuade the electorate is hardly a reason to suppress it . . . ." *Id.*

In each of these cases, the government argued that it could restrict speech out of concern that the audience might be persuaded and react to it. In each case, this Court squarely rejected that argument.

B. The Fourth Circuit's Decision Conflicts With This Court's Decisions Prohibiting The Restriction Of Speech Based On Audience Reaction

In contravention of these cases, the Fourth Circuit relied squarely on the impact of Central Radio's banner and the supportive reactions of those who saw it to conclude that Norfolk could restrict it. Specifically, it held that restricting Central Radio's banner was justified because some "passing motorists reacted to the banner by 'honk[ing] their horns,' 'yell[ing] things in support,' and 'wav[ing].'" App. 15 (alterations in original). According to the Fourth Circuit, "that passing motorists reacted emphatically

. . . constitutes evidence" that "motorists [we]re distracted by [the] sign while driving." App. 15-16 n.6.

To be clear, the Fourth Circuit did not cite any evidence that Central Radio's banner actually *caused* traffic problems. That is because there was no such evidence. In fact, Norfolk testified in interrogatory responses that "[t]he City is not aware of any safety problems with the sign." Frommer Decl. Ex. LL, at 2 (ECF No. 44-41 at 3). The witnesses that Norfolk designated confirmed as much. The manager of the City's Land Use Services Bureau testified that the banner was "very readable" and not "a great issue for traffic." Suppl. Frommer Decl. Ex. TT, at 202:16-19, 228:4 (ECF No. 53-3 at 203, 229) (deposition testimony of L. Newcomb). The director of the Planning Department similarly testified that he was not aware of any "evidence of large banners ever causing safety problems." Suppl. Frommer Decl. Ex. SS, at 28:5-10 (ECF No. 53-2 at 29) (deposition testimony of F. Duke).

Given the lack of evidence that Central Radio's banner posed any traffic safety problem, the Fourth Circuit relied solely on the fact that passersby "reacted emphatically" to the banner as the reason why it could be restricted. App. 16 n.6. In allowing Norfolk to restrict the banner on that basis, the Fourth Circuit's decision flatly contravened this Court's decisions in *R.A.V.*, *IMS Health*, and *Bellotti*, which make clear that government may not restrict speech based on its "'emotive impact'" or "'[l]isteners' reactions.'"

R.A.V., 505 U.S. at 394 (quoting *Boos*, 485 U.S. at 321).

C. The Fourth Circuit's Decision Creates A Split Over The Constitutionality Of Restricting Political Protest Signs Based On The Honking Of Passing Motorists

The Fourth Circuit's decision on this point not only conflicts with *R.A.V.*, *IMS Health*, and *Bellotti*, but also creates a split with another lower federal court over the constitutionality of restricting political protest signs based on the fact that some passersby honk in support when they see them. The Fourth Circuit's position on this issue threatens the free speech rights of not only the protesters whose speech triggers supportive honking, but also those who express their support in that manner.

In *Goedert v. City of Ferndale*, the Eastern District of Michigan held that a municipality violated the First Amendment when it ticketed anti-war demonstrators for signs that prompted passing motorists to honk in support of their protest of the war in Iraq. As the court explained, the protesters "intended to convey a particularized message with their signs" and "[m]otorists driving by . . . ha[d] honked their vehicle horns to show support for the message." *Goedert*, 596 F. Supp. 2d at 1031. The court noted that the government "ha[d] not come forward with any evidence correlating a single honk expressing support for the demonstration with safety problems." *Id.* at 1033. As

here, "[n]ot a single accident ha[d] occurred as a result of the [protest]," and the government "ha[d] not provided a single study or report showing that horn-honking or holding 'honk' signs causes traffic safety problems." *Id.* at 1033. Accordingly, the court held the citation of the protesters unconstitutional.

The Fourth Circuit's opinion creates a direct split with *Goedert* by concluding that restricting a political protest sign because of the horn-honking of supportive passersby does *not* violate the free speech rights of the protester. It also gives short shrift to the free speech rights of the passing motorists themselves, who, as numerous courts have held, have a First Amendment right to express their support and encouragement for a protest by honking.[8] In short, the Fourth Circuit allows cities like Norfolk to co-opt these supportive expressions and transmogrify them into a basis for censoring the very message that prompted them.

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[8] *E.g.*, *State v. Immelt*, 267 P.3d 305, 308 (Wash. 2011) (holding anti-honking ordinance unconstitutional because of the "numerous occasions in which a person honking a vehicle horn will be engaging in speech," including "a driver who enthusiastically responds to a sign that says 'honk if you support our troops'" and "a motorist who honks a horn in support of an individual picketing on a street corner"); *City of Eugene v. Powlowski*, 840 P.2d 1322, 1324 (Or. Ct. App. 1992) (holding anti-honking ordinance violated free-speech rights of motorists who had "honked . . . to demonstrate support . . . of a political issue or a matter of public concern"); *see also Meaney v. Dever*, 326 F.3d 283, 288 (1st Cir. 2003) (assuming that a police officer's "hornblowing constituted expressive conduct" when intended as a "message of solidarity" with a union protest).

D. The Fourth Circuit's Decision Renders Effective Political Speech The Easiest To Suppress

Finally, by allowing government to restrict political protest based on the supportive reactions it engenders, the Fourth Circuit's decision guarantees that effective political speech will be the *easiest* speech for government to suppress. As this Court has stressed, the freedom of citizens to try to persuade their fellow citizens is critical to ensuring that government remains "responsive to the will of the people." *Stromberg v. California*, 283 U.S. 359, 369 (1931); *see also Hill v. Colorado*, 530 U.S. 703, 763-64 (2000) (Scalia, J., dissenting) ("[T]he freedom to speak and persuade is inseparable from, and antecedent to, the survival of self-government."). The Fourth Circuit's decision, however, empowers government to quiet political protest precisely *because* it persuades – that is, because it is effective.

To safeguard the "freedom to speak and persuade," *id.*, this Court has developed a First Amendment jurisprudence that ensures government cannot prevent those who wish to speak out on public issues from reaching their intended audience. At the heart of that jurisprudence is the fundamental principle that "[t]he First Amendment protects [speakers'] right not only to advocate their cause but also to select what they believe to be the most effective means for doing so." *Meyer v. Grant*, 486 U.S. 414, 424 (1988); *see also Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 790-91 (1988) ("The First

Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it."). Here, Central Radio exercised that right, choosing a message and means that it thought were most likely to persuade the people of Norfolk that the government's taking of its property was wrong.

First, Central Radio carefully chose its message: "50 YEARS ON THIS STREET / 78 YEARS IN NORFOLK / 100 WORKERS / THREATENED BY EMINENT DOMAIN!" These words invited passers-by, even those who had seen Central Radio's building hundreds of times before, to see it in a new way: to consider just how long Central Radio had been a part of the community, just how long Central Radio had called the building home, and just how many people earned their living inside of it. The message, in other words, was chosen to focus attention not only on the building itself, but also on the threat that the government's attempt to take the building posed to Central Radio, its employees, and the community.

The means that Central Radio chose to convey that message – a large banner on the side of the building – was equally deliberate. Because its message was to the city at large, even those "persons not deliberately seeking . . . information" about the taking of its building, *Linmark Assocs., Inc. v. Twp. of Willingboro*, 431 U.S. 85, 93 (1977), it made the banner large enough to be seen by the many motorists who passed the building each day. And the banner's location (a building threatened with eminent

domain abuse) was a critical component of its message (urging an end to eminent domain abuse). As this Court has held, the location of speech is an "important component of many attempts to persuade," and "[d]isplaying a sign from one's own [property] often carries a message quite distinct from placing the same sign someplace else." *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994).[9] This case proves that point. Protesting eminent domain abuse at the very site of – indeed, on the very object of – that abuse was the only adequate means of conveying the message that such abuse is wrong.

In short, *this* banner, on *this* building, was the most direct way for Central Radio to protest the government's taking of the building. And the banner accomplished exactly what effective political protest is supposed to accomplish: it persuaded fellow citizens to support – and to *express* their support for – Central Radio's cause.

Yet, according to the Fourth Circuit, it was those very expressions of support that entitled Norfolk to suppress Central Radio's protest. The court discounted

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[9] *See also Galvin v. Hay*, 374 F.3d 739, 750 (9th Cir. 2004) (noting that the Supreme Court "has recognized that location of speech, like other aspects of presentation, can affect the meaning of communication and merit First Amendment protection for that reason"); Joseph Blocher, *Government Property and Government Speech*, 52 Wm. & Mary L. Rev. 1413, 1420-48 (2011) (noting that property not only enables expression, but can itself be expressive).

entirely Central Radio's right "to select what [it] believe[d] to be the most effective means" for advocating its cause, *Meyer*, 486 U.S. at 424, and instead simply asserted that Central Radio "d[id] *not* have a constitutional right to place [its] sign in the location and manner that [it] deem[ed] most desirable." App. 17 (emphasis added). In other words, in concluding that audience reaction justified restricting Central Radio's speech, the Fourth Circuit assumed that Central Radio did not even have the right to reach its audience in the first place.[10]

This Court should grant certiorari to review the Fourth Circuit's decision. Allowing government to suppress speech because of audience reaction will, as Justice Brennan warned, "lead to the evisceration of First Amendment freedoms." *Boos*, 485 U.S. at 334, 338 (Brennan, J., concurring). That warning is made manifest in this case. If allowed to stand, the Fourth Circuit's decision will usher in a perverse new jurisprudential order: an order in which effective political speech is the *easiest* speech for government to

[10] Although the Fourth Circuit asserted that reducing the size of the banner to the allowable size – an *84 percent* reduction – would be adequate for Central Radio to convey its message, App. 17, complying with that restriction would require Central Radio to either (1) change the content of its message or (2) reduce the banner's font size so drastically that it would be illegible to the passing motorists Central Radio intended to reach. As noted above, when Central Radio covered all but 60 square feet of the banner with a tarp in order to comply with the size restriction, virtually all of the banner's text was concealed from the public. *See supra* p. 8-9.

suppress; an order that "perpetually disadvantages dissidents like Central Radio"; and an order that "abandon[s] a core protection of our Constitution's First Amendment." App. 25, 27 (Gregory, J., dissenting).

CONCLUSION

For these reasons, Central Radio respectfully requests that this Court hold its petition pending a decision in *Reed* and, depending on the outcome in that case, either: (1) grant certiorari, vacate the Fourth Circuit's decision, and remand for reconsideration in light of *Reed*; or (2) grant certiorari for resolution on the merits.

Respectfully submitted,

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-1996

CENTRAL RADIO COMPANY INC;
ROBERT WILSON; KELLY DICKINSON,

Plaintiffs-Appellants,

v.

CITY OF NORFOLK, VIRGINIA,

Defendant-Appellee.

No. 13-1997

CENTRAL RADIO COMPANY INC;
ROBERT WILSON; KELLY DICKINSON,

Plaintiffs-Appellees,

v.

CITY OF NORFOLK, VIRGINIA,

Defendant-Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L.

Wright Allen, District Judge. (2:12-cv-00247-AWA-DEM)

Argued: September 17, 2014 Decided: January 13, 2015

Before GREGORY, AGEE, and KEENAN, Circuit Judges.

Affirmed by published opinion. Judge Keenan wrote the majority opinion, in which Judge Agee joined. Judge Gregory wrote a separate dissenting opinion.

ARGUED: Michael Eugene Bindas, INSTITUTE FOR JUSTICE, Bellevue, Washington, for Appellants/Cross-Appellees. Adam Daniel Melita, CITY ATTORNEY'S OFFICE, Norfolk, Virginia, for Appellee/Cross-Appellant. **ON BRIEF:** Robert P. Frommer, Erica Smith, INSTITUTE FOR JUSTICE, Arlington, Virginia, for Appellants/Cross-Appellees. Melvin W. Ringer, CITY ATTORNEY'S OFFICE, Norfolk, Virginia, for Appellee/Cross-Appellant.

BARBARA MILANO KEENAN, Circuit Judge:

In this appeal, we consider whether the district court erred in granting summary judgment to the City of Norfolk on claims that the City's sign ordinance

violated the plaintiffs' rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs, a radio manufacturing and repair business and two of its managers, asserted that the sign ordinance unconstitutionally exempted certain displays from regulation, effectuated a prior restraint on speech, and was selectively enforced in a discriminatory manner by zoning officials. Upon our review, we agree with the district court that the sign ordinance is a content-neutral restriction on speech that satisfies intermediate scrutiny, and we find no merit in the plaintiffs' other constitutional challenges. Therefore, we affirm the district court's judgment.

I.

A.

The City of Norfolk (the City) adopted a zoning ordinance that includes a chapter governing the placement and display of signs (the sign code). *See* Norfolk, Va., Code app. A § 16 (2012). The City enacted the sign code for several reasons, including to "enhance and protect the physical appearance of all areas of the city," and to "reduce the distractions, obstructions and hazards to pedestrian and auto traffic caused by the excessive number, size or height, inappropriate types of illumination, indiscriminate placement or unsafe construction of signs." *Id.* § 16-1.

The sign code applies to "any sign within the city which is visible from any street, sidewalk or public or private common open space." *Id.* § 16-2. However, as

defined in the ordinance, a "sign" does not include any "flag or emblem of any nation, organization of nations, state, city, or any religious organization," or any "works of art which in no way identify or specifically relate to a product or service." *Id.* § 2-3. Such exempted displays are not subject to regulation under the sign code.

With respect to signs that are eligible for regulation, the sign code generally requires that individuals apply for a "sign certificate" verifying compliance with the sign code. *Id.* §§ 16-5.1, 16-5.3. Upon the filing of such an application, the City is required to issue a "sign certificate" if the proposed sign complies with the provisions that apply in the zoning district where the sign will be located. *Id.* §§ 16-5.4, 16-8.

In the "I-1" industrial zoning district in which plaintiff Central Radio Company Inc.'s (Central Radio) property is located, the ordinance provisions include restrictions on the size of signs. *Id.* § 16-8.3. The size restrictions vary depending on whether a sign is categorized as a "temporary sign," which may be as large as 60 square feet, a "freestanding sign," which may be as large as 75 square feet, or an "other than freestanding sign," which may be as many square feet as the number of linear feet of building frontage facing a public street.[1] *Id.* The City does not patrol its zoning

[1] Under the sign code, a "temporary sign" is "[a] sign or advertising display constructed of cloth, canvas, fabric, paper, plywood or other light material designed to be displayed and removed within [specified] time periods." Norfolk, Va., Code app.

(Continued on following page)

districts for violations of size restrictions or other provisions of the sign code, but does inspect displays in response to complaints made by members of the public.

B.

The plaintiffs' challenges to the City's sign code relate to a protest of certain adverse action taken against Central Radio by the Norfolk Redevelopment and Housing Authority (NRHA). The NRHA is a chartered political subdivision of Virginia, and consists of an independent committee of seven members appointed by the Norfolk City Council. *See* Va. Code Ann. § 36-4.

In April 2010, the NRHA initiated condemnation proceedings against Central Radio and several other landowners, allegedly intending to take and transfer the various properties to Old Dominion University (ODU). Central Radio and the other landowners successfully opposed the taking in state court. Although a trial court initially ruled in favor of the NRHA, that ruling was reversed on appeal by the Supreme Court

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A § 16-3 (2012). A "freestanding sign" is "[a]ny sign placed upon or supported by the ground independently of any other structure." *Id.* An "other than freestanding sign," or "wall sign," as it is colloquially described by the parties and by the district court, is "[a] sign fastened to the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of, the sign or a sign painted directly on the wall of the structure." *Id.*

of Virginia. *PKO Ventures, LLC v. Norfolk Redevelopment & Hous. Auth.,* 747 S.E.2d 826, 829-30 (Va. 2013) (holding that the NRHA lacked the statutory authority to acquire non-blighted property by eminent domain). Accordingly, the condemnation proceeding against Central Radio was dismissed. *Norfolk Redevelopment & Hous. Auth. v. Central Radio Co.,* No. CL102965, 2014 WL 3672087 (Va. Cir. Ct. Apr. 15, 2014).

In March 2012, while the appeal was pending in state court, Central Radio's managers placed a 375-square-foot banner (the banner) on the side of Central Radio's building facing Hampton Boulevard, a major, six-lane state highway. The banner depicted an American flag, Central Radio's logo, a red circle with a slash across the words "Eminent Domain Abuse," and the following message in rows of capital letters: "50 YEARS ON THIS STREET/78 YEARS IN NORFOLK/100 WORKERS/THREATENED BY/ EMINENT DOMAIN!"[2] The plaintiffs intended that the banner "be visible for several blocks along Hampton Boulevard" and "make a statement about Central Radio's fight with the NRHA," which would constitute "a shout" rather than "a whisper."

An employee of ODU complained about the banner to a City official, who notified the City's zoning enforcement staff. After investigating the matter, a

[2] The Appendix to this Opinion contains an image of the plaintiffs' display.

zoning official informed Central Radio's managers that the banner violated the applicable size restrictions set forth in the sign code. At a later inspection, zoning officials noted that the plaintiffs had failed to bring the display into compliance with the sign code, and ultimately issued Central Radio citations for displaying an oversized sign and for failing to obtain a sign certificate before installing the sign.[3]

In May 2012, the plaintiffs initiated a civil action to enjoin the City from enforcing its sign code. The plaintiffs alleged that the sign code was unconstitutional because it subjected their display to size and location restrictions, but exempted certain "flag[s] or emblem[s]" and "works of art" from any similar limitations. The plaintiffs also alleged that the sign code's provision requiring them to obtain a sign certificate before erecting a display effectuated an impermissible prior restraint on speech, and that the City selectively applied the sign code to the plaintiffs' display in

[3] At the time of the first visit, a City zoning official stated that Central Radio's banner could not exceed 40 square feet, because the building wall facing Hampton Boulevard was 40 feet long. This calculation appeared to treat Central Radio's banner as an "other than freestanding sign" or "wall sign" under the size restrictions of the sign code. *See* Norfolk, Va., Code app. A § 16-8.3(c) (2012). However, when City zoning officials returned to the Central Radio site less than a week later, they stated that Central Radio's banner could not exceed 60 square feet, a determination apparently based on the restrictions governing "temporary signs." *See id.* § 16-8.3(a). Ultimately, the written citation issued by the City required Central Radio to reduce the size of its banner to 60 square feet or less.

a discriminatory manner. In addition to requesting declaratory relief and nominal damages, the plaintiffs moved for a temporary restraining order and a preliminary injunction.

The district court denied the plaintiffs' motions and, after discovery was completed, granted summary judgment in favor of the City. The court concluded that the provisions in the sign code exempting flags, emblems, and works of art were content-neutral. Applying intermediate scrutiny, the court held that the sign code was a constitutional exercise of the City's regulatory authority. The court held that those exemptions were reasonably related to the City's interests in promoting traffic safety and aesthetics, because such exempted displays "are less likely to distract drivers than signs" and "are commonly designed to be aesthetically pleasing." In reaching this conclusion, the court also rejected the plaintiffs' prior restraint and selective enforcement claims. After the court entered final judgment, the plaintiffs filed this appeal.[4]

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[4] We disagree with the City's contention that the district court abused its discretion in extending the deadline for filing the appeal after finding that any neglect by plaintiffs' counsel was excusable. *Cf. Thompson v. E.I. DuPont de Nemours & Co.,* 76 F.3d 530, 532 n.2 (4th Cir. 1996) (observing that the decision to grant an enlargement of time upon a showing of excusable neglect "remains committed to the discretion of the district court"). The district court did not exceed its discretion in excusing a brief delay that did not prejudice the defendant or result from any

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II.

The core component of the plaintiffs' challenge to the sign code is their argument that the sign code constitutes a content-based restriction on speech, both facially and as applied, that cannot survive strict scrutiny. We disagree with this argument, and address each component of the plaintiffs' constitutional challenges in turn.

A.

1.

In evaluating the content neutrality of a municipal sign ordinance, our "principal inquiry" is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Hill v. Colorado,* 530 U.S. 703, 719 (2000) (citation omitted); *see Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989) ("The government's purpose is the controlling consideration."). We have described this inquiry as being "practical" in nature, and have noted that the Supreme Court has rejected any "formalistic approach to evaluating content neutrality that looks only to the terms of a regulation." *Wag More Dogs, LLC v. Cozart,* 680 F.3d 359, 366 (4th Cir. 2012). Under our precedent,

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bad faith on the plaintiffs' part. *See, e.g., Salts v. Epps,* 676 F.3d 468, 474-75 (5th Cir. 2012).

> [a] regulation is not a content-based regulation of speech if (1) the regulation is not a regulation of speech, but rather a regulation of the places where some speech may occur; (2) the regulation was not adopted because of disagreement with the message the speech conveys; or (3) the government's interests in the regulation are unrelated to the content of the affected speech.

Brown v. Town of Cary, 706 F.3d 294, 302 (4th Cir. 2013) (quoting *Wag More Dogs,* 680 F.3d at 366).

We therefore have observed that "[a] statute's differentiation between types of speech does not inexorably portend its classification as a content-based restriction." *Wag More Dogs,* 680 F.3d at 366-67; *see also id.* at 368 ("That [municipal] officials must superficially evaluate a sign's content to determine the extent of applicable restrictions is not an augur of constitutional doom."). Instead, "a distinction is only content-based if it distinguishes content 'with a censorial intent to value some forms of speech over others to distort public debate, to restrict expression because of its message, its ideas, its subject matter, or to prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.'" *Clatterbuck v. City of Charlottesville,* 708 F.3d 549, 556 (4th Cir. 2013) (quoting *Brown,* 706 F.3d at 301-02); *see Covenant Media of S.C., LLC v. City of N. Charleston,* 493 F.3d 421, 434 (4th Cir. 2007) (noting that a sign ordinance may "require[ ] looking generally at what type of message a sign carries to

determine where it can be located," so long as the municipality does not undertake a "more searching inquiry into the content" that would "regulate the location of different types of signs based on the ideas or views expressed") (citation and internal quotation marks omitted). We discern censorial intent by examining whether there is a relationship between an ordinance's legislative purpose and the content distinctions addressed in the ordinance, *Brown,* 706 F.3d at 303, and by deciding "whether the government's content-neutral justification reasonably comports with the content distinction on the face of the regulation." *Clatterbuck,* 708 F.3d at 556.

In *Brown v. Town of Cary,* we reviewed a challenge to a sign ordinance that generally subjected residential signs to certain quantity and size restrictions, but exempted from regulation "holiday decorations" erected in honor of governmental or religious holidays and "public art" intended to beautify public areas. 706 F.3d at 298. We held that the municipality demonstrated a "reasonable relationship" between its exemptions and its legitimate interests in traffic safety and aesthetics, concluding that it was "reasonable to presume that public art and holiday decorations enhance rather than harm aesthetic appeal, and that seasonal holiday displays have a temporary, and therefore less significant, impact on traffic safety." *Id.* at 304. Although we acknowledged that the exempted displays "may implicate traffic safety no less than an ordinary residential sign," and may even "impair rather than promote

aesthetic appeal," we clarified that "the content neutrality inquiry is whether [a particular ordinance's] exemptions have a reasonable, not optimal, relationship to these asserted interests." *Id.* We also noted that empirical judgments regarding "the precise restriction necessary" to carry out legitimate legislative interests are best left to legislative bodies. *Id.* (quoting *Randall v. Sorrell,* 548 U.S. 230, 248 (2006) (plurality opinion)).

The content distinctions that we upheld in *Brown* resemble those at issue in the present case. The plaintiffs, however, attempt to distinguish the present sign code exemptions by arguing that they facially are unrelated to legislative interests in aesthetics or traffic safety, whereas the exemptions in *Brown* expressly involved decorations that were "not intended to be permanent in nature" and art that was "intended to beautify or provide aesthetic influences to public areas." 706 F.3d at 298.

The plaintiffs further characterize the City's sign code exemptions as being too narrow, in that they exempt the flags and emblems only of governmental or religious organizations, and being too broad, in that they exempt all works of art but do not specifically define "art." The plaintiffs argue that because private or secular flags may have the same effect on aesthetics and traffic safety as exempted displays, and because certain works of art may have a more detrimental effect with regard to those purposes than displays subject to regulation, the exemptions lack a

reasonable relationship to any legitimate interests and thus are content-based restrictions on speech.

The plaintiffs' analysis fails, however, because in determining the level of scrutiny, we are not concerned with the "precise" or "optimal" tailoring of exemptions to a sign ordinance, but the extent to which they bear a "reasonable" relationship to legitimate legislative purposes. *Id.* at 304. Indeed, in *Brown,* we agreed that similar exemptions "may impair" legislative interests, but concluded that the sign ordinance was content-neutral because it placed "reasonable time, place, and manner restrictions only on the physical characteristics of messages . . . exempt[ing] certain categories of signs from those restrictions solely on the basis of the [municipality's] asserted and legitimate interests of traffic safety and aesthetics." *Id.* at 304-05.

We reach a similar conclusion here. The City generally allows signs regardless of the message displayed, and simply restricts the time, place, or manner of their location. Exemptions to those restrictions may have an "incidental effect on some speakers or messages," but such exemptions do not convert the sign code into a content-based restriction on speech when the exemptions bear a "reasonable relationship" to the City's asserted interests. *Wag More Dogs,* 680 F.3d at 368 (citation omitted); *Brown,* 706 F.3d at 304.

We conclude that it is reasonable to presume that works of art generally "enhance rather than harm aesthetic appeal," *Brown,* 706 F.3d at 304, and we

find it similarly reasonable to conclude that flags or emblems generally have a less significant impact on traffic safety than other, more distracting displays. These exemptions do not differentiate between content based on "the ideas or views expressed." *Covenant Media,* 493 F.3d at 434 (quoting *Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 643 (1994)) (internal quotation marks omitted). By exempting the flags or emblems of governmental or religious organizations from reasonable size restrictions, the City has not indicated any preference for a particular governmental or religious speaker or message, and the sign code exerts only an "incidental effect" on the flags or emblems of other organizations. *Wag More Dogs,* 680 F.3d at 368. Also, by exempting works of art that are noncommercial in character, the City has not favored certain artistic messages over others. Given the City's "clear content-neutral purpose" and the absence of a more specific inquiry in the sign code regarding the content of the regulated signs, we conclude that the sign code is a content-neutral regulation of speech. *See Covenant Media,* 493 F.3d at 434.

2.

Because the sign code is content-neutral, we evaluate its constitutionality under intermediate scrutiny. *Brown,* 706 F.3d at 305. Under this level of deference, a content-neutral regulation is valid if it "furthers a substantial government interest, is narrowly tailored to further that interest, and leaves open ample alternative channels of communication." *Id.* (quoting

Wag More Dogs, 680 F.3d at 369) (internal quotation marks omitted).

Initially, we observe that the sign code was enacted to promote the City's "physical appearance" and to "reduce the distractions, obstructions and hazards to pedestrian and auto traffic." Such concerns for aesthetics and traffic safety undoubtedly are substantial government interests. *Id.* Moreover, the record contains evidence that Central Radio's banner affected those interests,[5] including testimony that the banner was sufficiently large to be seen from a distance of three city blocks, and that passing motorists reacted to the banner by "honk[ing] their horns," "yell[ing] things in support," and "wav[ing]."[6] *See*

[5] The plaintiffs state that the City is obligated "to proffer actual, objective evidence to support the sign-code provisions." We recently rejected, at the motion to dismiss stage, this "literally unprecedented" argument, observing that "were we to accept the proposition, dismissal would effectively never be appropriate in the context of a First Amendment challenge, as the inquiry starts and stops with facts alleged in the plaintiff's complaint and gives the government no opportunity to test the plausibility of the claim by producing evidence." *Wag More Dogs,* 680 F.3d at 365 n.3. But we also noted that the evidentiary burden is limited in that the City "need not reinvent the wheel by coming forward with voluminous evidence justifying a regulation of the type that has been upheld several times over." *Id.* We reiterate that the burden on the governmental defendant in this context is that "of establishing that the [sign code] passes constitutional muster under the rubric of intermediate scrutiny." *Id.*

[6] The plaintiffs contend that "[e]xpressions of support are not evidence of distraction; they are evidence of agreement." We fail to see how agreement with a message bears on the issue whether motorists are distracted by a sign while driving. The

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id. (noting that a motorist "beep[ing] his horn" in response to the plaintiff's sign constituted evidence of specific traffic problems relating to the display).

Next, we conclude that the sign code is narrowly tailored because it does not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward,* 491 U.S. at 799. Instead, the sign code's size and location restrictions demonstrate that the City has "carefully calculated the costs and benefits associated with the burden on speech. . . ." *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 417 (1993) (internal quotation marks omitted). Because such restrictions "do no more than eliminate the exact source of the evil [the ordinance] sought to remedy," we are satisfied that the sign code is sufficiently well-tailored to withstand constitutional scrutiny. *Brown,* 706 F.3d at 305 (citation and internal quotation marks omitted).

Finally, unlike an outright ban on speech, the sign code "leaves open ample alternative channels of communication" by generally permitting the display of signs "subject only to size and location restrictions." *Wag More Dogs,* 680 F.3d at 369 (citation and internal quotation marks omitted). Although the

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undisputed fact that passing motorists reacted emphatically to Central Radio's banner, regardless whether they privately or publicly agreed with the banner's message, constitutes evidence that the banner contributed to the "distractions, obstructions and hazards to pedestrian and auto traffic" that the sign code was intended to reduce.

plaintiffs argue that there are no reasonable alternatives for conveying the same message in a way that can be seen from Hampton Boulevard by "the thousands of people who pass by Central Radio's property every day," the plaintiffs do not have a constitutional right to place their sign in the location and manner that they deem most desirable. *See Ross v. Early,* 746 F.3d 546, 559 (4th Cir. 2014) (observing that "[t]he First Amendment affords no special protection to a speaker's favored or most cost-effective mode of communication") (citation and internal quotation marks omitted). Accordingly, our inquiry "does not rise or fall on the efficacy of a single medium of expression." *Id.*

It is undisputed here that the plaintiffs' 375-square-foot banner would comport with the City's sign code if the banner were reduced to a size of 60 square feet. We recently have deemed such an alternative to be adequate upon comparable facts. *See Wag More Dogs,* 680 F.3d at 369 (reasoning that a sign ordinance left open ample alternative channels of communication because the plaintiff was allowed to display a 60-square-foot version of a 960-square-foot painting). Accordingly, because the City's content-neutral sign code satisfies intermediate scrutiny both facially and as applied to the plaintiffs' display, we agree with the district court's holding that the sign code satisfies the constitutional requirements of the First Amendment.

B.

The plaintiffs additionally argue that the City selectively enforced its sign code in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment when the City issued the citations to the plaintiffs but allowed analogous displays to stand. A selective enforcement claim of this nature requires a plaintiff to demonstrate that the government's enforcement process "had a discriminatory effect and that it was motivated by a discriminatory purpose." *Wayte v. United States,* 470 U.S. 598, 608 (1985). Thus, a plaintiff must show not only that similarly situated individuals were treated differently, but that there was "clear and intentional discrimination." *Sylvia Dev. Corp. v. Calvert Cnty., Md.,* 48 F.3d 810, 825 (4th Cir. 1995) (citing *Washington v. Davis,* 426 U.S. 229, 239 (1976)).

Even assuming, without deciding, that the City's past refusal to enforce strictly the sign code constituted evidence of discriminatory effect,[7] dismissal of the plaintiffs' selective enforcement claim was proper because there was insufficient evidence that the City was motivated by a discriminatory intent. We have recognized several factors as probative in determining discriminatory intent, including:

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[7] On appeal, the City appears to have conceded that it declined to enforce its sign code against the oversized electronic message board of a local museum, but maintains that "Central Radio failed to show that the decision to forego enforcement was motivated by a desire to favor some particular message."

> (1) evidence of a "consistent pattern" of actions by the decisionmaking body disparately impacting members of a particular class of persons; (2) historical background of the decision, which may take into account any history of discrimination by the decisionmaking body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures; and (4) contemporary statements by decisionmakers on the record or in minutes of their meetings.

Sylvia Dev., 48 F.3d at 819 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 266-68 (1977)).

None of these factors weighs in the plaintiffs' favor. Although the plaintiffs attempt to impugn the City's motives in enforcing its sign code against their banner protesting the use of eminent domain by the NRHA, the record is devoid of evidence that the City attempted to reduce the size of Central Radio's sign because the City disagreed with Central Radio's message or sought to suppress a message that was critical of the NRHA, an independent entity. Also absent from the record is any indication of "significant departures from normal procedures" by City zoning officials, *id.,* who received a complaint about a sign, conducted an investigation, consulted with one another, and issued Central Radio a verbal warning followed by written citations.

We agree with the district court that the City's past failure to enforce its sign code strictly, and the City's more zealous efforts to do so since the commencement of this litigation, are not sufficient to substantiate the "invidiously discriminatory intent" that is required of a selective enforcement claim. *Sylvia Dev.,* 48 F.3d at 819 (citations and internal quotation marks omitted). Instead, the plaintiffs must show "that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* at 819 n.2 (citation and internal quotation marks omitted). Such evidence is wholly lacking in this case. Accordingly, we affirm the district court's award of summary judgment on the plaintiffs' selective enforcement claim.

C.

Finally, the plaintiffs argue that the sign code is an unconstitutional prior restraint on speech because it required them to obtain a sign certificate evidencing compliance with the sign code, but failed to impose time limits or adequate standards on the City's decisionmaking process. We disagree.

The Supreme Court requires procedural safeguards for certain speech licensing schemes, which protections include time limitations on the decisionmaking process. *See Freedman v. Maryland,* 380 U.S. 51, 58-60 (1965); *11126 Balt. Blvd., Inc. v. Prince George's Cnty., Md.,* 58 F.3d 988, 997 (4th Cir. 1995)

(en banc). Those safeguards, however, apply only to content-based "subject-matter censorship," not to "content-neutral time, place, and manner regulation." *Thomas v. Chi. Park Dist.,* 534 U.S. 316, 322 (2002).

Because we have held that the City's sign code was content-neutral, we further conclude that the sign code was not required to impose a constitutional protection of time limits on the decisions of zoning officials. *See Covenant Media,* 493 F.3d at 435. However, this conclusion does not necessarily end the inquiry, because a decisionmaker cannot use the absence of such requirements to stifle an individual's First Amendment rights. *Id.* (citing *Thomas,* 534 U.S. at 323).

Here, the plaintiffs do not allege that the City is responsible for any undue delay in enforcing the sign code. In fact, it appears that City zoning officials informed Central Radio's managers that their sign failed to comply with the sign code immediately upon inspecting Central Radio's property, and issued written citations less than a week later when the officials observed that the sign had not been modified or removed despite the warning.

The plaintiffs argue, nevertheless, that the City's sign code confers too much discretion on the zoning officials who process applications for sign certificates. Under the Supreme Court's decision in *Thomas,* "a content-neutral licensing regulation must 'contain adequate standards to guide the official's decision and render it subject to effective judicial review.'" *Wag*

More Dogs, 680 F.3d at 372 (quoting *Thomas,* 534 U.S. at 323). "Adequate standards are those that channel the decision maker's discretion, forcing it to focus on concrete topics that generate palpable effects on the surrounding neighborhood." *Id.* (citation, brackets, and internal quotation marks omitted).

Although the plaintiffs acknowledge that the City's sign code does not provide officials *any* discretion to deny a sign certificate when the requisite standards are satisfied, the plaintiffs argue that the standards governing size restrictions and exemptions for "works of art" are so vague and indeterminate that they do not provide any guide for official decisions. We disagree with this argument.

The sign code clearly defines the circumstances in which size restrictions apply based on a sign's classification as a "temporary sign," "freestanding sign," or "other than freestanding sign," *see* Norfolk, Va., Code app. A §§ 16-3, 168.3 (2012), and limits the "works of art" exemption to displays "which in no way identify or specifically relate to a product or service," *id.* § 2-3. Although arbitrariness in applying restrictions or exemptions "would pose constitutional difficulty," any such abuse must be addressed "if and when a pattern of unlawful favoritism appears, rather than by insisting upon a degree of rigidity that is found in few legal arrangements." *Wag More Dogs,* 680 F.3d at 373 (quoting *Thomas,* 534 U.S. at 325) (internal quotation marks omitted).

The plaintiffs have failed to show any such "pattern of unlawful favoritism." *Id.* Nor have the plaintiffs argued that the sign code fails to satisfy *Thomas's* requirement that an ordinance provide for decisions "subject to effective judicial review," 534 U.S. at 323, perhaps because the plaintiffs had a statutory right to appeal their citations to the board of zoning appeals, Va. Code Ann. § 15.2-2311, and to file a petition for judicial review of any final decision by that body, *id.* § 15.2-2314. *Cf. Wag More Dogs,* 680 F.3d at 373 (noting that the existence of an adequate statutory review process for certain zoning decisions satisfied the second prong of the *Thomas* formulation). Accordingly, because the City's sign code satisfies the standards required of content-neutral licensing regulations, we conclude that the district court did not err in rejecting the plaintiffs' challenge to the sign code as an unconstitutional prior restraint on speech.

III.

For these reasons, we affirm the district court's judgment.

AFFIRMED.

GREGORY, Circuit Judge, dissenting:

Central Radio challenges the City of Norfolk's restrictions on its sign protesting the seizure of its land by eminent domain – a protest that the Virginia

Supreme Court ultimately vindicated. *See PKO Ventures, LLC v. Norfolk Redev. & Hous. Auth.*, 747 S.E.2d 826, 833 (Va. 2013). I write separately to dissent from Part II.A.1 of the majority opinion, as I do not believe our precedent compels application of a content-neutral inquiry.

I would apply a content-based test to the City's Sign Code. As the majority opinion recognizes, this Court's so-called practical inquiry is meant to determine if the government's regulation is "justified without reference to the content of regulated speech." *Brown v. Town of Cary,* 706 F.3d 294, 303 (4th Cir. 2013) (quoting *Hill v. Colorado,* 530 U.S. 703, 720 (2000)). As we stated in *Brown,* the lack of any relationship between a law's content distinction and its legislative end is probative of whether the government has discriminated on the basis of content. *See* 706 F.3d at 303 (citing *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 513-14 (1981) (plurality)). In a case like this, involving political speech against the heaviest hand of government attempting to seize its citizen's land, we must ensure a "reasonable fit" between the City's asserted interests in aesthetics and traffic safety, and the Code's exemptions for government and religious emblems and flags. *Id.*

I disagree that the City has demonstrated this "reasonable fit." Why is it that the symbols and text of a government flag do not affect aesthetics or traffic safety and escape regulation, whereas a picture of a flag does negatively affect these interests and must be subjected to size and location restrictions? I see no

reason in such a distinction. This is a much different case from the exemptions we confronted in *Brown* for temporary holiday decorations and public art. *See* 706 F.3d at 304-05. There, we thought it "reasonable to presume" that decorations and art enhance aesthetic appeal, and that the seasonal nature of holiday displays had a "temporary, and therefore less significant, impact on traffic safety." *Id.* at 304. Unlike in our case, the exemptions in *Brown* could be justified on the basis of aesthetics and safety concerns. I find no such justification here, where the City's regulatory scheme perpetually disadvantages dissidents like Central Radio. The danger is not that the City has "indicated any preference for a particular governmental or religious speaker or message," Maj. Op. at 15, but that it declines to regulate entirely and therefore favors *all* official government and religious speakers and speech. For this reason, the exemptions should be forced to withstand heightened scrutiny under a content-based test.

Furthermore, the City has not adequately demonstrated that its adoption of the Code and its exemptions was unrelated to disagreement with a particular message. *See Wag More Dogs, LLC v. Cozart,* 680 F.3d 359, 368 (4th Cir. 2012) ("[D]isagreement with the message [speech] conveys . . . is the principal inquiry in determining content neutrality.") (internal quotation marks and citation omitted). Although the City maintains this is the case, it references only the Purpose Statement within the Code as support. In *Brown,* we warned that "the mere assertion of a

content-neutral purpose" is not "enough to save a law which, on its face, discriminates based on content." 706 F.3d at 304 (quoting *Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 642-43 (1994)); *see also id.* ("[W]hen a government supplies a content-neutral justification for the regulation, that justification is not given controlling weight without further inquiry.") (quoting *Whitton v. City of Gladstone,* 54 F.3d 1400, 1406 (8th Cir. 1995)). Even if a party need not "com[e] forward with voluminous evidence justifying a regulation," *Wag More Dogs,* 680 F.3d at 365 n.3, surely it must do something more than simply point to a content-neutral justification written into the law's preface. At least in *Brown,* the city "adequately documented" that its legislative interests were unrelated to the ordinance's content distinctions through legislative findings, policy statements, and testimony of Town officials. *Brown,* 706 F.3d at 305. I find no such showing in this record.*

This case implicates some of the most important values at the heart of our democracy: political speech challenging the government's seizure of private property – exactly the kind of taking that our Fifth Amendment protects against. If a citizen cannot

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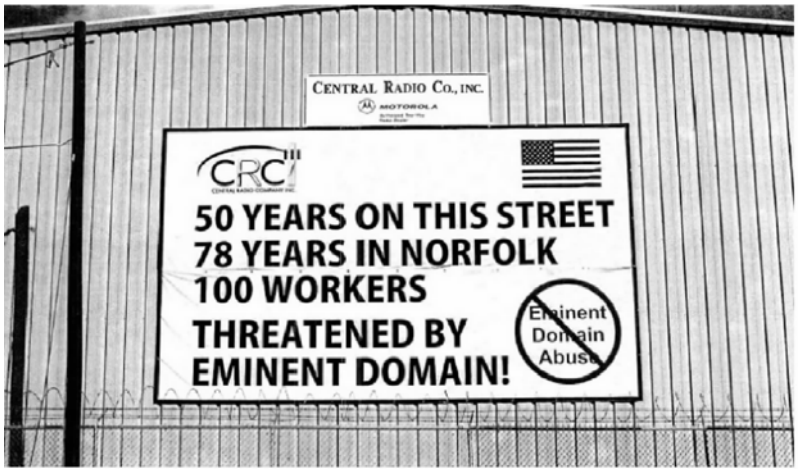
* In fact, one of the drafters of the Code revealed in his deposition: "Why do we create exemptions for government flags, is that what you're asking? Because I believe we believe that's the right thing to do . . . I think we consider the importance of an American flag or a state flag to far exceed that of an enthusiastic sports flag." J.A. 1012-13.

speak out against the king taking her land, I fear we abandon a core protection of our Constitution's First Amendment. Here, Central Radio spoke out against the king and won. It may be that the Code passes the heightened scrutiny of a content-based inquiry. But to stop short without subjecting the regulation to a more rigorous examination does a disservice to our cherished constitutional right to freedom of speech. I respectfully dissent.

APPENDIX



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CENTRAL RADIO COMPANY, INC.,
ROBERT WILSON, and
KELLY DICKINSON,

Plaintiffs,

v. Civil Action No. 2:12cv247

CITY OF NORFOLK, VIRGINIA,

Defendants.

ORDER

(Filed May 15, 2013)

On May 2, 2012, Plaintiffs Central Radio Company, Inc. ("Central Radio"), Robert Wilson, and Kelly Dickinson brought this suit against the City of Norfolk ("the City") seeking to enjoin enforcement of the City's Sign Code (the "Sign Code") against a banner that Plaintiffs have erected in protest of the seizure of their property. Plaintiffs argue that the Sign Code violates their First Amendment right to freedom of speech.

Both parties filed cross-motions for summary judgment. For the reasons that follow, Plaintiffs' Motion for Summary Judgment (ECF No. 44) is **DENIED** and Defendants' Motion for Summary Judgment (ECF No. 45) is **GRANTED**.

I. FACTUAL BACKGROUND

In deciding a motion for summary judgment, the Court must determine whether there is a "*genuine* issue of *material* fact," that is, a factual dispute where: (1) the evidence is such that a reasonable jury could resolve the dispute in favor of either party, rendering the dispute "genuine," and (2) the resolution of the dispute will affect the outcome of the case, rendering the fact "material." *Anderson v. Liberty Lobby Inc.,* 477 U.S. 242, 248 (1986). The substantive law governs whether disputed facts are material. *Id.* The Court begins by recounting the facts of this case.

A. NORFOLK'S SIGN CODE

Norfolk's Sign Code regulates "any sign within the city which is visible from any street, sidewalk or public or private common open space." Norfolk Code app. A § 16-2 (2012). This definition excludes works of art or the "flag or emblem of any nation, organization of nations, state, city, or any religious organization." *Id.* § 2-3. The purpose of the Sign Code is to promote safety and improve Norfolk's aesthetics. *Id.* § 16-1.

Central Radio is located in a limited industrial area referred to as an "I-1 district." The Sign Code permits three categories of signs in an I-1 district: temporary signs, freestanding signs, and wall signs. *Id.* § 16-8.3. Most signs require a permit from the City before they can be erected, although several categories of signs are exempt from this requirement. *Id.* §§ 16-5.1, 16-5.2.

The Sign Code allows certain temporary signs: (1) signs for commercial sale events, new businesses, or "grand openings" that are no larger than sixty square feet, (2) signs for construction and new project development that are no larger than thirty-two square feet, (3) political campaign signs and real estate signs that are no larger than sixteen square feet, and (4) signs for noncommercial events that are no larger than eight square feet. *Id.* § 16-8.3(a).

Properties that are not corner lots may only have one temporary sign at a time. *Id.* However, this restriction has not been enforced against political campaign signs since the Fourth Circuit struck a similar restriction as unconstitutional in *Arlington County Republican Committee v. Arlington County, Virginia,* 983 F.2d 587, 595 (4th Cir. 1993).

Businesses in industrial districts with more than 200 feet of lot frontage may erect freestanding signs of up to seventy-five square feet in area, which must be surrounded by landscaping. Norfolk Code app. A §§ 16-6.9 16-8.3(b). The Sign Code allows wall signs facing public streets, if those signs do not exceed one square foot of signage per linear foot of building frontage along the street they face. *Id.* §§ 16-6.8(c), 16-8.3(c).

The City refrains from actively investigating Sign Code violations, but instead only inspects signage in response to complaints by the public. Officers examining a property may inspect neighboring properties for similar problems. Plaintiffs contend, and

the City denies, that this method has led to marginal enforcement in the past.

B. Central Radio's Protest Banner

Plaintiff Central Radio is a radio manufacturing and repair business located on 39th Street in Norfolk, Virginia. Central Radio's structure extends for ninety feet along 39th Street. One side of this building is adjacent to 150 feet of unimproved land. Hampton Boulevard, a major thoroughfare, runs opposite of this unimproved land. Central Radio has operated in this location for fifty years.

Several years ago, the Norfolk Redevelopment Housing Authority ("NRHA") undertook seizing Central Radio's property via eminent domain for use by Old Dominion University. The NRHA is an independent committee consisting of members appointed by the City. In February 2011, a state court approved this seizure, and the matter has been continued for a compensation trial. Central Radio intends to appeal the state court's ruling after trial proceedings are complete.

In March 2012, Plaintiffs affixed a large protest banner to the side of their building facing Hampton Boulevard. This banner is 375 square feet in area, and contains this message: "50 years on this street/ 78 years in Norfolk/ 100 Workers/ Threatened by Eminent Domain." The banner also depicts an American flag, Central Radio's company logo, and what Plaintiffs refer to as "an anti-eminent domain abuse

symbol," consisting of the words "Eminent Domain Abuse" contained in a red circle with a slash across these words. The banner is intended to encourage the public to pressure the City to cancel the seizure, and was designed to be legible from Hampton Boulevard. Some drivers "honked approvingly whenever Plaintiffs were outside their building." Frommer Decl. Ex. NN 21:15-16, ECF No. 44-43 at 22.

C. The Complaint and Its Aftermath

On March 25, 2012, members of the Old Dominion University Real Estate Foundation ("ODUREF"), the intended recipient of Central Radio's property, learned of the sign. An ODUREF official complained to a city official, who notified the zoning enforcement personnel.

In late March or early April 2012, Inspector Harold Tanner visited Central Radio's property. He informed Ms. Dickinson that because the wall facing Hampton Boulevard was forty feet long, the protest banner could not exceed forty square feet. This calculation appears to treat the banner as a wall sign. *See* Norfolk Code app. A § 16-8.3(c).

On April 5, 2012, Inspector Tanner returned with City Zoning Enforcement Coordinator Leslie Garrett and determined that the banner could not exceed sixty square feet. This figure appears to be derived from the largest area allowed for temporary signs: signs for commercial sale events, new businesses, or grand openings. *Id.* § 16-8.3(a).

Central Radio was issued citations for displaying a sign that exceeded the size limitations in the Sign Code, and for erecting a sign without a permit. Plaintiffs were instructed to reduce the banner to sixty square feet.

On May 2, 2012, Plaintiffs filed this suit, seeking to enjoin the City from enforcing the Sign Code against them. Plaintiffs requested a temporary restraining order and a preliminary injunction. The request for a restraining order was denied on May 4, 2012.

Plaintiffs' filings identified several other signs that exceeded the size limitations of the Sign Code, some of which were located on the City's buildings. The City thereafter pursued enforcement of the Code against some of these signs. However, at least one oversized sign, a flashing message board at the Nauticus Museum, remains. Plaintiffs argue that the City previously failed to enforce the Sign Code against an abortion protestor and against a sign opposing President Obama. The City responds that these signs did not violate the Code.

On July 27, 2012, this Court denied Plaintiffs' request for a preliminary injunction. The City then notified Plaintiffs that noncompliance with the Code would subject them to misdemeanor charges and fines of $1,000 a day. Plaintiffs responded by covering their banner with a tarp.

In October 2012, Plaintiffs applied for a sign certificate that would allow a 60-foot portion of the

banner to display the anti-eminent domain abuse symbol. The City informed them that no certificate was necessary. Accordingly, Plaintiffs removed the tarp from the portion of the banner containing the anti-eminent domain abuse symbol.

II. COMMON STANDARD OF LAW

A. SUMMARY JUDGMENT

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson,* 477 U.S. at 247-48. "Only disputes over facts that might affect the outcome of the suit under the governing law will preclude the entry of summary judgment." *Id.* at 248. Factual disputes that are irrelevant or unnecessary will not be considered by a court in its determination. *Id.*

After a motion for summary judgment is advanced and supported, the opposing party has the burden of showing that a genuine dispute of fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586-87 (1986). At that point, the Court's function is not to "weigh the evidence and determine the truth of the matter but to determine

whether there is a genuine issue for trial." *Anderson,* 477 U.S. at 249.

In doing so, the Court must "construe the facts in the light most favorable to [the nonmoving party], and may not make credibility determinations or weigh the evidence." *Holland v. Wash. Homes, Inc.,* 487 F.3d 208, 213 (4th Cir. 2007). If there is "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party," the motion for summary judgment should be denied. *Anderson,* 477 U.S. at 249.

B. First Amendment

"[S]peech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." *Connick v. Myers,* 461 U.S. 138, 145 (1983) (quoting *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 913 (1982)). However, "municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression." *Members of the City Council of L.A. v. Taxpayers for Vincent,* 466 U.S. 789, 806 (1984).

There are two methods by which the constitutionality of a statute can be analyzed: either via a facial challenge, or via an "as-applied" challenge. *See, e.g., Wag More Dogs, Ltd. Liab. Corp. v. Cozart,* 680 F.3d 359, 365-69 (4th Cir. 2012). A facial challenge examines the constitutionality of the statute itself, without regard to the plaintiff's particular circumstances.

See id. An as-applied challenge argues that the statute cannot constitutionally be applied to the plaintiff. *See id.* at 369.

In determining whether a restriction on speech is permissible, courts distinguish between content-based regulations "that suppress, disadvantage, or impose differential burdens upon speech because of its content," and content-neutral regulations that merely "impose burdens on speech without reference to the ideas or views expressed." *Turner Broad Sys., Inc. v. FCC,* 512 U.S. 622, 642-43 (1994). Courts also distinguish between commercial speech and non-commercial speech. *United States v. Chester,* 628 F.3d 673, 682 (4th Cir. 2010).

"[T]he First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals." *Turner Broad Sys., Inc.,* 512 U.S. at 641. Accordingly, "a content-based speech restriction on noncommercial speech is permissible only if it satisfies strict scrutiny." *Chester,* 628 F.3d at 682 (quoting *United States v. Playboy Entm't Grp., Inc.,* 529 U.S. 803, 813 (2000)) (internal quotation marks omitted). "Strict scrutiny requires the law in question to be 1) narrowly tailored to 2) promote a compelling government interest." *PSINet, Inc. v. Chapman,* 362 F.3d 227, 233 (4th Cir. 2004).

In contrast, "content-neutral time, place, and manner regulations" and "law[s] regulating commercial speech" are subject to intermediate scrutiny. *Chester,*

628 F.3d at 682. Under intermediate scrutiny, a law "is generally valid if it furthers a substantial government interest, is narrowly tailored to further that interest, and leaves open ample alternative channels of communication." *Am. Legion Post 7 v. City of Durham,* 239 F.3d 601, 609 (4th Cir. 2001).

"The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989).

The purpose of a regulation is not dispositive. *See Turner Broad Sys., Inc.,* 512 U.S. at 642-43. Instead, a regulation is content-neutral if:

> (1) the regulation is not a regulation of speech, but rather a regulation of the places where some speech may occur; (2) the regulation was not adopted because of disagreement with the message [the speech] conveys; or (3) the government's interests in the regulation are unrelated to the content of the [affected] speech.

Covenant Media of S.C., LLC v. City of N. Charleston, 493 F.3d 421, 432 (4th Cir. 2007) (alterations in original) (quoting *Hill v. Colorado,* 530 U.S. 703, 719-20 (2000)) (internal quotation marks omitted). "Distilling this three-part test into one succinct formulation of content neutrality, if a regulation is justified

without reference to the content of regulated speech," the Fourth Circuit has "not hesitated to deem [the] regulation content neutral even if it facially differentiates between types of speech." *Brown v. Town of Cary,* 706 F.3d 294, 303 (4th Cir. 2013) (alteration provided) (quoting *Hill,* 530 U.S. at 720; *Wag More Dogs,* 680 F.3d at 366) (internal quotation marks omitted).

Speech is classified as "commercial speech" if it "propose[s] a commercial transaction." *Adventure Commc'ns, Inc. v. Ky. Registry of Election Fin.,* 191 F.3d 429, 441 (4th Cir. 1999) (alteration in original) (quoting *Bd. of Trs. of State Univ. of N.Y. v. Fox,* 492 U.S. 469, 473 (1989)) (internal quotation marks omitted). Speech is construed as commercial speech if it constitutes advertising, references a specific product, or is motivated by economic concerns. *Wag More Dogs,* 680 F.3d at 370. None of these factors is dispositive. *Adventure Commc'ns,* 191 F.3d at 440-41.

When speech contains a mixture of commercial and noncommercial elements, "the commercial or noncommercial character of the speech is determined by 'the nature of the speech taken as a whole.'" *Id.* at 441 (quoting *Riley v. Nat'l Fed'n of Blind of N.C., Inc.,* 487 U.S. 781, 796 (1988)); *see also Fox,* 492 U.S. at 474-75 (holding that inserting home economics lessons into sales presentations "no more converted [those] presentations into educational speech, than opening sales presentations with a prayer or a Pledge of Allegiance would convert them into religious or

political speech"). Therefore, consideration of the full context of the speech is viewed as "critical." *Id.*

III. ANALYSIS

A. Standard of Scrutiny

"'Because the degree of protection afforded by the First Amendment depends on whether the activity sought to be regulated constitutes commercial or non-commercial speech, [a court] must first determine the proper classification of the [banner] at issue here.'" *Bolger v. Youngs Prods. Corp.,* 463 U.S. 60, 65 (1983). This Court must also determine whether the Sign Code is content-based or content-neutral. *Brown,* 706 F.3d at 300.

Central Radio's banner displays noncommercial speech. Although the banner features Central Radio's corporate logo, that inclusion is inextricably intertwined with the banner's noncommercial speech. The logo serves to identify the sign's "speaker," not attract new customers, and the message about the company's longevity and employment bolsters Plaintiffs' assertions that the use of eminent domain procedures against Plaintiffs is unjust. The "full context" of the banner reveals a purpose to protest against governmental action, and not to "propose[ ] a commercial transaction." *Adventure Commc'ns,* 191 F.3d at 441 (alteration provided) (quoting *Fox,* 492 U.S. at 473) (internal quotation marks omitted).

Restrictions on noncommercial speech escape strict scrutiny only if they are content-neutral. *See Chester,* 628 F.3d at 682. Plaintiffs argue that the Sign Code is content-based because it distinguishes government or religious flags or emblems and murals or works of art, and creates different categories of temporary signs.

The Fourth Circuit has held that a regulation that "facially differentiates between types of speech" is content-neutral if the distinction "is justified without reference to the content of regulated speech." *Brown,* 706 F.3d at 303 (quoting *Hill,* 530 U.S. at 720; *Wag More Dogs,* 680 F.3d at 366) (internal quotation marks omitted). In determining whether a regulation "has distinguished *because* of content," courts examine whether the regulation's "distinctions bear a reasonable relationship to the . . . asserted content neutral purposes." *Id.* at 304.

There is no dispute that the general purpose of the Sign Code is to promote traffic safety and aesthetics. The Code's exemptions are reasonably related to these purposes. Most flags, emblems, and artwork either lack text or present text that is superfluous to the display. These images are less likely to distract drivers than signs. Flags, emblems, and artwork are commonly designed to be aesthetically pleasing, serving to "enhance rather than harm aesthetic appeal." *Id.* Because these exemptions are justified without reference to the content of regulated speech, they are considered content-neutral. *Cf. id.* at 303-04

(upholding as content-neutral an exemption for public art and holiday decorations).

The Sign Code's system of categorizing signs, which asks city officials to "superficially evaluate a sign's content to determine the extent of applicable restrictions," is insufficient by itself to render the Sign Code content-based. *See Wag More Dogs,* 680 F.3d at 368. For a regulation with a clear content-neutral purpose to be content-based, the regulation must impose a "more searching inquiry into the content." *Covenant Media,* 493 F.3d at 434. Plaintiffs have presented no evidence that any such inquiry is required by the Norfolk Sign Code.

Plaintiffs also argue that the Sign Code is content-based because it is selectively enforced against only those speakers who are disfavored by the City. Plaintiffs cite the Ninth Circuit case of *Hoye v. City of Oakland* for the proposition that some enforcement policies will render an otherwise content-neutral regulation content-based. 653 F.3d 835 (9th Cir. 2011).

Hoye held that courts may not "rely[ ] on enforcement policies . . . to invalidate a statute that is valid as written but not as enforced." *Id.* at 848. The Ninth Circuit considered the plaintiff's selective enforcement claims separately. *See id.* at 849. Plaintiffs' selective enforcement claims are discussed separately below.

In sum, Central Radio's banner constitutes non-commercial speech. The Sign Code's regulation of that banner is construed as content-neutral because the

regulation applies "without reference to the ideas or views expressed." *Turner Broad. Sys., Inc.,* 512 U.S. at 643. Therefore, intermediate scrutiny applies.

B. FACIAL CHALLENGE

A regulation will survive intermediate scrutiny only if the regulation "furthers a substantial government interest, is narrowly tailored to further that interest, and leaves open ample alternative channels of communication." *Am. Legion Post 7*, 239 F.3d at 609.

The City asserts that the Sign Code promotes traffic safety and aesthetics. The Fourth Circuit has held that these are substantial government interests that are furthered by sign regulations. *Wag More Dogs,* 680 F.3d at 368. Although Plaintiffs contend that the City has not submitted proof of links between sign regulation and traffic safety, "arguments based solely on logic or common sense normally are allowed." *The News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth.,* 597 F.3d 570, 579 (4th Cir. 2010) (holding that empirical data is needed when the interest promoted by the regulation is weak, such as a purely aesthetic interest).

This Court finds no genuine dispute that the Sign Code furthers a substantial government interest. Plaintiffs present no evidence that the Sign Code, on its face, is overbroad or fails to leave open ample alternative channels of communication. *Cf. Brown,* 706 F.3d at 305 (holding that a sign ordinance that

restricted the "size, color and positioning" of signs was nevertheless narrowly tailored and left open ample alternative channels of communication). Therefore, the Court finds that the Sign Code is facially constitutional.

C. As-Applied Challenge

Plaintiffs also claim that the Sign Code is unconstitutional *as applied* to their protest banner. The Court disagrees. As discussed above, the Sign Code serves the substantial government interests of traffic safety and aesthetics. *Wag More Dogs,* 680 F.3d at 368. Although Plaintiffs have presented some evidence suggesting that signs like theirs pose no threat to traffic safety, this evidence is insufficient to render the City's conclusion to the contrary unreasonable. *Brown,* 706 F.3d at 305 (holding that the relationship between the regulation and its goals must be "a reasonable, not optimal, relationship," and that these precise factual calibrations fall to the province of legislatures).

The Court also acknowledges that there is evidence that some drivers have been distracted by Central Radio's banner. Frommer Decl. Ex. NN 21:15-16, ECF No. 44-43 at 22. Under the totality of the evidence and circumstances presented, viewing the evidence in the light most favorable to Plaintiffs, this Court concludes that, as applied to Central Radio's banner, the Sign Code is narrowly tailored to serve substantial government interests.

The Court also considers whether the Sign Code leaves open "ample alternative channels of communication." A sign ordinance "leaves open ample alternative channels of communication" when it "generally permit[s] the display of all types of signs, subject only to size and location restrictions." *Wag More Dogs,* 680 F.3d at 369 (alteration provided) (quoting *Am. Legion Post 7,* 239 F.3d. at 609) (internal quotation marks omitted); *accord Brown,* 706 F.3d at 305 (contrasting such regulations to a "flat ban of residential signs invalidated by [*City of*] *Ladue* [*v. Gilleo*], 512 U.S. [43,] 56 [(1994)]"). Norfolk's Sign Code, like the ordinances at issue in *Brown* and *Wag More Dogs,* does not ban all signs, but instead sets reasonable size and location restrictions. Plaintiffs can currently display a sixty-square-foot banner. They argue that this size precludes displaying their full message in a legible manner to drivers on Hampton Boulevard (150 feet away). Plaintiffs also argue that alternative methods of communication (other than signage) would be less effective, because a sign conveys a direct connection between the proposed condemnation and the well-maintained condition of the property being condemned.

Plaintiffs have a constitutional right to use signs to express their view. Their ability to display signs up to sixty square feet provides Central Radio with "ample alternative channels of communication." Therefore, the Court concludes that the Sign Code is constitutional as applied to Central Radio's protest banner.

D. SELECTIVE ENFORCEMENT ARGUMENT

Plaintiffs also claim that the City employs an unconstitutional practice of enforcing the Sign Code selectively. Plaintiffs argue that the City enforces the Sign Code only against speech of which the City disapproves. Plaintiffs also argue that the City's complaint-based system of enforcement favors popular speech over unpopular speech.

"It is appropriate to judge selective prosecution claims according to ordinary equal protection standards." *Wayte v. United States,* 470 U.S. 598, 608 (1985). "[T]hese standards require [plaintiffs] to show both that the passive enforcement system had a discriminatory effect and that it was motivated by a discriminatory purpose." *Id.* Plaintiffs have established neither.

Although there is evidence that the City's complaint-driven policy has resulted in sparse enforcement of the Sign Code, there is no evidence of *selective* enforcement. Plaintiffs assert that there have been three instances in which the City became aware of violations and took no action. One of these involves an oversized flashing message board at Norfolk's Nauticus Museum. Frommer Decl. Ex. HH 167:16-168:11, ECF No. 44-37 at 52-53.

Another involved a sign opposing President Obama, which perhaps was a campaign sign that remained on display after the presidential election. Frommer Decl. Ex. JJ, 87:25-88:10, ECF No. 44-39 at 21. The evidence presented failed to confirm whether

there was an actual violation. *Id.* 88:22-89:24, 91:9-19, ECF No. 44-39 at 22-24.

Plaintiffs also claim that some signs protesting abortion were allowed to remain on display in violation of municipal law. These signs apparently violated the City Code, not the Sign Code. *Id.* 25:14-27:6, ECF No. 44-39 at 6-7.

These examples fall short of establishing a pattern of discrimination on the basis of content. Evidence that suggests that the City has been slow to enforce the Sign Code against political speech also is nondispositive. Appropriate caution does not constitute improper discrimination. *Cf. Nat'l Fed'n of the Blind v. F.T.C.,* 420 F.3d 331, 345 (4th Cir. 2005) (noting that courts should be reluctant to take actions that might "chase government into overbroad restraints of speech").

Plaintiffs' contention that the Sign Code's complaint-driven enforcement system disfavors unpopular speech that is more likely to trigger complaints is unpersuasive. This theory is plausible, but Plaintiffs have presented no evidence that the City's complaint-driven enforcement system has had a discriminatory effect, or, moreover, that it was adopted for the purpose of generating such an effect.

Plaintiffs have not shown that the City's enforcement of the Sign Code is designed to discriminate on the basis of content, or that it has the effect of discriminating on the basis of content. Therefore,

Defendants are entitled to summary judgment on Plaintiffs' claim of selective enforcement.

E. Permit Requirement

Finally, Plaintiffs argue that the requirement that they receive a sign permit prior to erecting a sign constitutes an impermissible prior restraint on speech. Plaintiffs argue that the permit requirement is unconstitutional because it exempts certain sign categories from the permit system and provides no time limit for the City to decide permit applications.

Ordinances that require permits as a prerequisite for speech sometimes are required to limit how long applications may remain pending. *See Freedman v. Maryland,* 380 U.S. 51, 58-59 (1965). "Nevertheless, not all prior restraint permitting schemes must provide [these] procedural safeguards." *Covenant Media,* 493 F.3d at 431 (citing *Thomas v. Chi. Park Dist.,* 534 U.S. 316, 322 (2002)). Instead, a sign regulation is required to contain such time limits only if the regulation is content-based. *Id.* at 432. As discussed above, the Sign Code is content-neutral. Therefore, the Sign Code is not constitutionally obligated to limit the length of time officials may take processing permit application.

Plaintiffs also argue that the Sign Code provides too much discretion to the officials who process permit applications. "To pass constitutional muster, a content-neutral licensing regulation must contain adequate standards to guide the official's decision and

render it subject to effective judicial review." *Wag More Dogs,* 680 F.3d at 372 (quoting *Thomas,* 534 U.S. at 323) (internal quotation marks omitted). "Adequate standards are those that channel[ ] the [decision maker's] discretion, forcing it to focus on concrete topics that generate palpable effects on the surrounding neighborhood." *Id.* (alterations in original) (quoting *Steakhouse, Inc. v. City of Raleigh,* 166 F.3d 634, 639 (4th Cir. 1999)) (internal quotation marks omitted).

In this case, the Sign Code specifies what constitutes an acceptable sign. These standards are based on the signs' "palpable effects on the surrounding neighborhood," rather than on the City's approval of their content. Plaintiffs assert that the City failed to challenge several signs code violations promptly, but there is no evidence that it granted a permit to any of these signs. Therefore, this Court concludes the City's permit requirement does not violate the First Amendment.

IV. CONCLUSION

Plaintiffs have a fundamental right to protest the government's taking of their property. Such political protests "occup[y] the 'highest rung of the hierarchy of First Amendment values,' and [are] entitled to special protection." *Connick,* 461 U.S. at 145 (quoting *Claiborne Hardware Co.,* 458 U.S. at 913). However, when that protest takes the form of a 375-foot wall banner, it becomes subject to the same reasonable

time, place, and manner regulations that are placed upon all other signs that are erected in the city. And while Plaintiffs have presented evidence that the City's enforcement of its Sign Code has been inconsistent, the evidence does not support a finding that the City has improperly discriminated on the basis of content.

The evidence presented does not raise a genuine issue of issue of material fact as to Plaintiffs' claims. Therefore, Plaintiffs' Motion for Summary Judgment (ECF No. 44) is **DENIED** and Defendants' Motion for Summary Judgment (ECF No. 45) must be **GRANTED**.

This case is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

/s/ Arenda L. Wright Allen
Arenda L. Wright Allen
United States District Judge

May 15th, 2013
Norfolk, Virginia

CODE OF THE CITY OF NORFOLK, VIRGINIA

CHAPTER 42: STREETS AND SIDEWALKS

* * *

42-10 Encroachments and obstructions generally.

* * *

(b) It shall be unlawful for any person to affix, place, erect, maintain, post or attach or cause or allow to be affixed, placed, erected, maintained, posted or attached any sign, banner, poster, sticker, post, light bay or other window, shed, porch, portico, door, platform, step, or any other object or thing of any form or nature whatsoever in or on any right of way, street, alley or land of the city without authorization of council, unless otherwise authorized by law or ordinance.

* * *

APPENDIX A – ZONING ORDINANCE

* * *

CHAPTER 2: DEFINITIONS

* * *

2-3 Definitions.

For the purposes of this ordinance, the following terms shall have the following meanings.

* * *

Sign. Any object, device, or structure or part thereof situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business product, service, event, or location by any means including words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state, city, or any religious organization; works of art which in no way identify or specifically relate to a product or service; or scoreboards located on athletic fields.

* * *

CHAPTER 16: SIGNS

16-1 Purpose statement.

The purpose of this chapter is to promote and protect the public health, safety and welfare of the city; enhance opportunities for visual communication; preserve property values; create a more attractive economic and business climate within the office, commercial, and industrial areas of the city; enhance and protect the physical appearance of all areas of the city; and reduce the distractions, obstructions and hazards to pedestrian and auto traffic caused by the excessive number, size or height, inappropriate types of illumination, indiscriminate placement or unsafe construction of signs.

16-2 Scope.

The regulations of this chapter shall govern and control the location, erection, enlargement, expansion, alteration, operation, maintenance, relocation, and removal of any sign within the city which is visible from any street, sidewalk or public or private common open space. These regulations shall also govern the removal of signs determined to be physically unsafe or which create a safety hazard to the public. These regulations dictate the types, location and physical standards of signs subject to the sign certification and permit procedures of this chapter. The regulations of this chapter shall be in addition to any applicable provisions of the Virginia Outdoor Advertising Act, 1950 Virginia Code Annotated section 33.1-351, et seq. (1984 Repl. Vol & 1989 Supp.), and the Uniform Statewide Building Code applicable to the construction and maintenance of signs.

16-3 Definition of terms.

For the purposes of this Chapter 16, signs and their features and characteristics shall be defined and classified as follows:

* * *

Building frontage. The portion of the principal building of an establishment which faces a street. If the principal buildings are arranged on the lot in such a manner as to face a parking area, then the

area facing said parking area may be considered the building frontage.

* * *

Freestanding sign. Any sign placed upon or supported by the ground independently of any other structure. This shall include pole, pylon, monument and ground signs.

* * *

Political campaign sign. A sign that advertises a candidate or issue to be voted upon on a definite election day.

* * *

Temporary sign. A sign or advertising display constructed of cloth, canvas, fabric, paper, plywood or other light material designed to be displayed and removed within the time periods indicated in section 16-6.16.

* * *

Wall sign. A sign fastened to the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of, the sign or a sign painted directly on the wall of the structure.

* * *

16-5 Registration and permits.

16-5.1 *Sign certificate and registration fee.** Unless expressly exempted in section 16-5.2 below, no sign shall be erected, enlarged, expanded, reconstructed, relocated or maintained on private or public property unless a sign certificate shall have been issued by the zoning administrator evidencing the compliance of such sign with the provisions of this chapter, including the payment of a registration fee pursuant to section 16-5.3(h) and of a building permit pursuant to chapter 11 of the City Code.

16-5.2 *Exemptions.* The following signs and sign-related activities shall be exempt from the provisions of this chapter to the extent indicated below:

(a) *Exemption from all provisions.*

(1) *Routine maintenance.* Routine sign maintenance or changing of lettering or parts of signs designed to be regularly changed, including sign face changes.

(2) *Gas pump signs.* Signs permanently affixed to or painted directly onto a gasoline pump.

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* In addition to the certificate required pursuant to chapter 16-5, a state permit issued by the Virginia Department of Transportation may also be required for outdoor advertising signs located within 660 feet of highways that are part of the interstate or primary highway systems.

(3) *Flags and emblems*. Government flags and emblems displayed on flag poles or in the form of a wall sign. One corporate flag of twenty-four (24) square feet or less per business location and displayed on a flag pole.

(4) *Home security signs.* Home security signs shall be limited to no more than one square foot in area, and shall be limited to no more than two (2) signs per zoning lot.

(5) *Building or house numbers.* Building or house numbers shall be limited to no more than one wall or freestanding sign per occupancy. In no event shall building numbers be more than two (2) square feet in area and house numbers more than one square foot in area. No freestanding sign shall be higher than four (4) feet or closer to any lot line than six (6) feet.

(6) *Vending machine signs.* Signs permanently affixed to or painted onto a vending machine.

(7) *Interior signs.* Any sign in the interior of a building not intended to be seen from outside the building.

(8) *Directory signs.* Any directory sign not greater than six square feet in area.

(9) *Murals.* As allowed in commercial, industrial and downtown districts.

(10) *Festival banner.* When authorized by the city.

(11) *Reserved.*

(b) *Exemption from registration fee.* With the exception of pre-existing signs as defined below, the following types of signs are exempt from the registration fee, however, the erection or placement of such signs does require the issuance of a sign certificate. Such signs shall not be counted as part of the site's total sign allocation.

(1) *Pre-existing signs.* Signs existing on or before October 15, 1991.

(2) *Institutional bulletin boards*. Bulletin boards or kiosks no greater than eighteen (18) square feet per face, maintained on premises owned by a unit of government, church or place of worship, a not-for-profit organization or recreation center and any paper notices affixed thereto.

(3) *Memorial plaques.* Memorial plaques shall be limited to no more than one wall sign per zoning lot; shall be made of durable materials, such as bronze, stone or concrete; and shall not exceed four (4) square feet in area.

(4) *Historical markers.* Historic markers shall be limited to no more than one wall or freestanding sign per zoning lot; shall be made of durable materials, such as bronze, stone or concrete; and shall not exceed nine (9) square feet in area. No freestanding sign shall be higher than ten (10) feet.

(5) *Neighborhood identification signs.* Signs identifying the name only of a neighborhood may be displayed provided such signs shall not be illuminated, and the sign face shall not exceed eight (8) square feet in area. No freestanding sign shall be higher than ten (10) feet.

(6) *On-premises directional and informational signs.* On-premises directional and informational signs directing and guiding vehicular or pedestrian traffic shall be limited as follows:

(aa) The information on the sign shall direct the public to the entrance, parking, or other pertinent public feature of the facility and may include identification of the building and uses served by the parking areas and regulations pertaining to the parking areas;

(bb) The sign shall contain no advertising or promotional content;

(cc) The sign surface area of any such accessory sign shall not exceed nine square feet per sign face;

(dd) The height of any such sign shall not exceed ten feet;

(ee) If located at the driveway entrance to the site, there shall be no more than one such sign per driveway; and

(ff) Such accessory signs shall not be located in or overhang any public right-of-way.

(7) *Off-premises directional signs.* Any off-premises directional signs not greater than three square feet in area.

(8) *Warning signs.* Private warning signs shall be limited to wall signs; shall be no more than six square feet in area; and shall be limited to one such sign unless the zoning administrator determines that additional warning signs are necessary for the protection of public safety.

16-5.3 *Application requirements*. Applications for a sign certificate shall be submitted to the zoning administrator on forms provided by the department of city planning and codes

administration. Every application for a sign certificate shall include:

(a) The street name and street number of the building or the site on which the sign is to be erected.

(b) Names, addresses, and telephone numbers of the applicant, owner of the property on which the sign is to be erected or affixed, the owner of the sign, and the licensed contractor erecting or affixing the sign.

(c) An existing conditions inventory drawn to approximate scale indicating the proposed location of the sign(s), an outline of the principal building(s), the locations and dimensions of all existing signs on the site, landscaping, and the location of any traffic signs or signals near or adjacent to the site.

(d) Four blueprints or inked, scaled drawings of the plans and specifications of the sign to be erected or affixed. Such details shall include accurate dimensions, materials, layout of the copy, and size of the proposed sign. For wall signs, dimensions of the building wall on which the sign is to be affixed and the dimensions and location of the proposed wall signs shall also be included.

(e) Current photographs of the street sides of the property in question, showing all existing signs on the property. For

proposed wall signs a photograph of the entire facade of the building on which the sign is to be erected.

(f) Applications for permits for outdoor advertising signs, in addition to the above information, shall contain a survey showing at least the following: the location of all outdoor advertising signs within 500 feet on both sides of the street; all structures on the site; all adjoining Residential Districts; and applicable setbacks and side or rear yards in the Zoning District.

(g) A landscaping agreement for freestanding signs (on a form provided by the zoning administrator) on which the property owner or authorized agent agrees to install and maintain the required landscaping. Timing of initial installation may be based on appropriate planting seasons and shall be indicated on the agreement.

(h) A registration fee as provided for in Article IV, section 19-4.

(i) Other information as the zoning administrator may require to determine full compliance with this chapter and other applicable regulations.

* * *

16-6 General standards.

* * *

16-6.8 *Sign measurement.*

* * *

(c) *Sign location.* Signs shall be located facing the street or lot line from which the allotment is computed.

* * *

16-6.9 *Signs requiring landscaping.* All free-standing signs and all outdoor advertising signs shall have landscaping in accordance with the standards set forth in sections 16-6.10, 16-6.11, 16-6.12, and 16-6.13 (See also Figure 16-1).

* * *

16-6.16 *Display period and removal of temporary signs.*

Sign Type	*Display Period*	*Removal Required 3 Days After*
Construction or New Development (showing project, developer, financier and/or contractor name)	Duration of Construction	Issuance of final certificate of occupancy
Political	Duration of Campaign (starting on date named person files for candidacy)	Election Day
Real estate (advertising a property for sale or rent)	Duration of Listing	Close of sale or signing of lease
Commercial sale	Duration of Sale, limited to 15 times per year per business per lot	End of specific sale Advertised
Balloon	Seven days, limited to 3 times per year per business per lot	–
Garage/yard sale	Duration of Sale	End of specific sale Advertised
Noncommercial event	Duration of Event or 1 month, whichever is less, limited to 4 times per year	End of Event
Museum or public event banner	Up to six months	End of specific event Advertised

* * *

16-8 Permitted signs.

No sign certificate shall be issued unless the type of proposed sign is permitted in the Zoning District in which the sign is to be located, as indicated on Table 16-1; the sign meets the general standards in section 16-6, above; and the sign does not, by itself or cumulatively with other existing or planned signs, exceed these regulations:

* * *

16-8.3 *Signs permitted in industrial districts.* The following regulations apply to those properties located in industrial districts (I-1, I-2, I-3, I-4, I-5, and PD-I):

(a) *Temporary signs*. One sign per business except that two (2) such signs shall be permitted on corner lots. Such signs may have two (2) faces with each sign face area as follows:

Construction signs	32 sq. ft.
Noncommercial events	8 sq. ft.
Political campaign	16 sq. ft.
Real estate	16 sq. ft.
New project development	32 sq. ft.
Commercial sale event/ New business/ grand opening	60 sq. ft.

(b) *Freestanding signs.* Establishments having less than one hundred (100) feet of lot frontage may not have a freestanding sign.

Businesses having at least one hundred (100) feet of lot frontage but less than or equal to two hundred (200) feet of lot frontage may have one freestanding sign not to exceed thirty-two (32) square feet of sign surface area per face.

Businesses having more than two hundred (200) feet but less than four hundred (400) feet of lot frontage may have one freestanding sign not to exceed seventy-five (75) square feet of sign surface area per face.

For each additional four hundred (400) feet of lot frontage, one additional freestanding sign shall be allowed not to exceed seventy-five (75) square feet of sign surface area per face.

(c) *Other than freestanding signs.* Any property or business shall be permitted one square foot of sign surface area for each foot of building frontage facing a public street but not less than thirty-two (32) square feet.

* * *

16-8.6 *Signs permitted in the downtown districts.* The following regulations shall apply to those properties located in the D-1 (downtown waterfront), D-2 (downtown regional center), D-3 (Freemason/Granby conservation and mixed use), D-4 (downtown cultural and convention center), D-5 (waterfront mixed use), and G-1 (Granby/Monticello mixed use) districts:

(a) *Temporary signs*. One sign per business except that two (2) such signs shall be permitted on corner lots. Such signs may have two (2) faces with each sign face area as follows:

Construction signs	64 sq. ft.
Noncommercial events	8 sq. ft.
Political campaign event	8 sq. ft.
Real estate	16 sq. ft.
New residential development	32 sq. ft.
New project development	32 sq. ft.
Commercial sale event/ New business/ grand opening	60 sq. ft.
Museum banner	100 sq. ft., no more than 2 signs
Public event banner	City guidelines

* * *

CHAPTER 23: ENFORCEMENT

* * *

23-4 Penalties and remedies for violations.

23-4.1 Violations of the provisions of this ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances, conditional zoning map amendments, special exceptions, the issuance of zoning certificates or development plan approval, shall constitute a misdemeanor offense and upon conviction shall be punishable by a fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000) for each offense.


CENTRAL RADIO CO., INC.
MOTOROLA
Authorized Two-Way Radio Dealer
CRC
CENTRAL RADIO COMPANY INC.
50 YEARS ON THIS STREET
78 YEARS IN NORFOLK
100 WORKERS
THREATENED BY EMINENT DOMAIN!
Eminent Domain Abuse


CENTRAL RADIO CO., INC.
MOTOROLA
CRC
50 YEARS ON THIS STREET
78 YEARS IN NORFOLK
100 WORKERS
THREATENED BY
EMINENT DOMAIN!
Eminent
Domain
Abus