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14 Beverly Hills Garden & Open Space Initiative

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 Residents for The Beverly Hills Garden &) Case No. 16-5532
19 Open Space Initiative,)

20 Plaintiff,

2.1 VS.

The City of Beverly Hills.

22 || *Defendant.*

) Case No. 16-5532
)
)
)
)
**ORIGINAL COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

2 1. Plaintiff urgently seeks this Court’s protection from an
3 unconstitutional ordinance that would severely burden its efforts to communicate
4 with voters regarding a pending ballot initiative. This case is about “core political
5 speech” under the First Amendment. *McIntyre v. Ohio Elections Comm’n*, 514
6 U.S. 334, 347 (1995). “No form of speech is entitled to greater constitutional
7 protection.” *Id.*

8 2. Plaintiff, Residents for The Beverly Hills Garden & Open Space
9 Initiative, is sponsoring a ballot initiative to amend a city zoning plan for the
10 benefit of both the citizens of Beverly Hills and private investors (the
11 “Initiative”). Plaintiff collected the requisite number of signatures to place the
12 Initiative on the ballot and, on July 19, 2016, the City Council of the City of
13 Beverly Hills voted to submit the Initiative to the voters on the November 2016
14 ballot.

15 3. To persuade voters to support the Initiative, Plaintiff is in the midst
16 of preparing to launch a large media campaign involving mailers, radio ads, and
17 television ads about the Initiative’s benefits. But, through a local ordinance, the
18 Defendant City of Beverly Hills is now demanding that Plaintiff set aside
19 extraordinarily large and prominent portions of its advertising for a government-
20 prescribed message, including a subjective description of the Initiative set by a
21 local government official. This government message is so large that Plaintiff is
22 now completely foreclosed from using typical forms of advertising media. And
23 what avenues to speak remain are now so burdened that they are essentially
24 worthless for persuading voters.

25 4. Specifically, the City seeks to compel Plaintiff to include the
26 following lengthy statement in its entirety in *14-point font* on all written
27 advertisements, to read the same full disclaimer aloud in any audio
28 communications (including telephone calls), and to devote a remarkable 50% of

1 any video to displaying the disclaimer:

2 **This communication is presented and paid for by Residents for The**
 3 **Beverly Hills Garden & Open Space Initiative, with major funding by**
 4 **Oasis West Realty LLC / The Beverly Hilton. These donors are listed**
 5 **in descending order of contribution amount. More current**
 6 **information regarding the sources of funding for this election**
 7 **campaign is available at www.beverlyhills.org. (“An initiative measure**
 8 **to amend the Beverly Hilton Specific Plan to combine the 8 story**
 9 **Wilshire condominium building with the 18 story Santa Monica**
 10 **condominium building resulting in one 26 story building with**
 11 **additional height and to replace the Wilshire building with 1.7 acres of**
 12 **garden open space that is generally open to the public subject to**
 13 **reasonable restrictions determined by the property owner.”)**

14 5. The government-prescribed message goes far beyond the sort of
 15 minimally burdensome disclosures or disclaimers sometimes required by
 16 campaign regulations—*i.e.*, a short statement disclosing the origins of funding for
 17 an ad. Here, the ordinance mandates that Plaintiff include a city employee’s
 18 subjective “title” for the Initiative (the 64-word sentence appearing in quotes at
 19 the end of the block quote above), but provides absolutely no standard by which
 20 that title must be set. As a result of the subjective title requirement and other text
 21 required by law, the required language is so voluminous that political advocacy—
 22 the very point of the constitutionally-protected advertisements—becomes
 23 entirely ineffective. For example, the government’s mandated message
 24 completely prevents Plaintiff from utilizing standard 30-second radio
 25 advertisements, because the message itself takes longer than that to say—even
 26 when read by a professional. The government’s message also prevents Plaintiff
 27 from using standard 4x6 direct mail post cards, because its text consumes *two*
 28 *thirds of the space on the main side of the card*, leaving little room for any other

1 message. The ordinance and its attendant risk of criminal liability are, right now,
2 significantly chilling Plaintiff's core political speech

3 6. The ordinance cannot be squared with the First Amendment’s strong
4 protections for political speech. The ordinance’s requirement to include a
5 subjective “title” on the face of political communications is facially invalid: it is
6 subject to strict scrutiny because it is not a limited disclosure of purely factual
7 information, and it fails that scrutiny because it is not narrowly tailored to achieve
8 any compelling government interest. And taken as a whole, the government’s
9 compelled message is so burdensome that, as applied to Plaintiff, the ordinance
10 also fails under the “exacting scrutiny” standard applicable to purely factual
11 disclosures, because the significant burdens it imposes outweigh the
12 government’s minimal interest in forcing Plaintiff to communicate its message.

13 7. Plaintiff respectfully requests that the Court issue a temporary
14 restraining order and preliminary injunction barring application of the ordinance
15 to Plaintiff, and barring any application at all of the ordinance's subjective title
16 requirement. This interim relief is warranted because of the exigent
17 circumstances presented by this dispute; each day that Plaintiff is foreclosed from
18 advocating its position, the likelihood that the voters will approve the Initiative is
19 diminished.

PARTIES

21 8. Plaintiff, Residents for the Beverly Hills Garden & Open Space
22 Initiative, is a ballot measure committee organized and registered in accordance
23 with California's Political Reform Act, Cal. Gov't Code §§ 81000 *et seq.*
24 Plaintiff is a coalition of businesses and individuals. Its purpose is to educate the
25 public about the benefits of, and to advocate for, the adoption and
26 implementation of the Initiative.

27 9. Defendant City of Beverly Hills is a municipal corporation organized
28 and existing under and by virtue of the laws of the State of California.

JURISDICTION AND VENUE

2 10. This lawsuit alleges violations of Plaintiff's rights under the First
3 Amendment of the United States Constitution and 42 U.S.C. § 1983.
4 Accordingly, this Court has "federal question" jurisdiction over Plaintiff's claims
5 by virtue of 28 U.S.C. § 1331.

6 11. Venue is proper in the Central District of California pursuant to 28
7 U.S.C. § 1391(b) because the events and omissions giving rise to Plaintiff's
8 claims occurred in Beverly Hills, which is located within the Central District.

9 12. Plaintiff has standing to bring this pre-enforcement challenge, which
10 is also ripe for judicial resolution. The Supreme Court has long recognized that
11 “[w]hen [a] plaintiff has alleged an intention to engage in a course of conduct
12 arguably affected with a constitutional interest, but proscribed by a statute, and
13 there exists a credible threat of prosecution thereunder, he ‘should not be required
14 to await and undergo a criminal prosecution as the sole means of seeking relief.’”
15 *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (citation
16 omitted). Such a credible threat is presented by the mere existence of a statute
17 that is “recent and not moribund,” *Doe v. Bolton*, 410 U.S. 179, 188 (1973), and
18 that the government has not “disavowed any intention” of enforcing, *Babbitt*, 442
19 U.S. at 302.

GENERAL ALLEGATIONS

The Initiative

22 13. In 2008, the Beverly Hills City Council approved the Beverly Hilton
23 Specific Plan (the “Specific Plan”), authorizing the construction of a new 170-
24 room hotel and two residential buildings (an 8-story building and an 18-story
25 building, with a total of 110 condominiums) on an approximately 8.97-acre
26 property adjacent to the iconic Beverly Hilton.

27 14. Several implementing actions—including a General Plan amendment
28 necessary to effectuate the Specific Plan—were approved at the same time. The

1 General Plan amendment was the subject of a referendum, and on November 4,
2 2008, the registered voters of the City of Beverly Hills approved the General Plan
3 amendment via Measure H, allowing the Specific Plan to be implemented.

4 15. Construction of the new hotel is underway on the property and is
5 expected to be completed in 2017. Construction of the residential buildings has
6 not yet commenced.

7 16. The primary purpose of the Initiative is to amend the Specific Plan
8 to eliminate the approved 8-story residential building and consolidate it with the
9 approved 18-story residential building (resulting in a single 26-story residential
10 building), and provide for a new garden in place of the eliminated building. The
11 Initiative provides that the garden “shall generally be open to the public, hotel
12 guests, event guests and residents, subject to reasonable rules, regulations, and
13 security, including hours of use, as determined by the owner of the property.”
14 The Initiative also discloses that “[t]he garden and open space may be used for
15 private events from time to time, as determined by the property owner.”

16 17. Raising public awareness and support is always an import aspect of
17 securing passage of a ballot initiative. To that end, Plaintiff was engaged in an
18 extensive media campaign to get the Initiative on the ballot, and wants to make
19 extensive use of print, radio, and television advertising now to convince voters to
20 ultimately approve the Initiative.

21 18. A primary purpose of these advertisements is to inform the public
22 about the benefits of the Initiative, in particular the new garden that will be
23 generally open to the public.

24 19. Plaintiff obtained the necessary number of signatures from Beverly
25 Hills voters to qualify the Initiative for the ballot. On July 19, 2016, the City
26 Council voted to submit the Initiative to the voters.

27 ***The Beverly Hills Ordinance***

28 20. California’s Political Reform Act contains certain disclosure and

1 disclaimer requirements that apply to all advertisements sent by a committee
 2 formed to support or oppose a ballot measure (whether the measure is state or
 3 local). Cal. Gov't Code §§ 84504, 84507. The law permits local jurisdictions to
 4 impose their own additional requirements.

5 21. The City of Beverly Hills has enacted its own ordinance which goes
 6 far beyond state law requirements. Beverly Hills Muni. Code §§ 1-8-1 *et. seq.*
 7 As relevant here, the ordinance mandates significant additional government-
 8 prescribed content on each “advertisement” for or against a “City Ballot
 9 Measure.” *Id.* § 1-8-5.

10 22. The ordinance defines “advertisement” as “[a]ny general or public
 11 communication, including printed, mailed, telephonic, automated, and electronic
 12 communications, which is authorized and paid for by a ballot measure committee
 13 for the purpose of supporting or opposing a city ballot measure. The term
 14 ‘advertisement’ does not include personal communications between individuals,
 15 such as personal telephone calls made by an individual to another individual, one
 16 to one conversations, debates or other informational presentations by an
 17 individual, but shall include, without limitation, automated telephone calls to
 18 voters.” *Id.* § 1-8-2. A “City Ballot Measure” is defined as “[a]ny initiative,
 19 referendum or city council sponsored measure that is submitted solely to the
 20 voters of the city of Beverly Hills.” *Id.*

21 23. The ordinance compels numerous statements that, when considered
 22 together with state law requirements, total *120 words*.

23 24. In particular, the ordinance requires that every such advertisement
 24 disclose, in descending order by contribution amount, the identity of any person
 25 or entity who contributes, either in cash or in kind, over \$10,000. *Id.* § 1-8-5 (C).

26 25. For print, video, or email advertisements, the following message
 27 must appear in 14-point font:

28 This communication is presented by [name of committee]

1 with major funding provided by [legal name of donors in
2 descending order of amount of contribution]. These
3 donors are listed in descending order of contribution
4 amount. More current information regarding the sources
5 of funding for this election campaign is available at
6 www.beverlyhills.org.

7 || *Id.* § 1-8-5 (E).

8 26. Importantly, the ordinance also provides that every advertisement
9 "shall contain the official title of the city ballot measure, as provided by the city
10 attorney." *Id.* § 1-8-5 (F). The ordinance does not define "official title," or
11 provide any standard for the City Attorney to apply when drafting the "official
12 title."

13 27. In effect, this “title” provision gives the City Attorney unfettered
14 discretion to dictate the content and length of the government’s prescribed
15 message. There is nothing to stop the City Attorney from, for example, requiring
16 a title that pejoratively characterizes the initiative, or that is 2,000 words in length.

17 28. Here, the City Attorney set the following lengthy “official title” for
18 the Initiative: “An initiative measure to amend the Beverly Hilton Specific Plan
19 to combine the 8 story Wilshire condominium building with the 18 story Santa
20 Monica condominium building resulting in one 26 story building with additional
21 height and to replace the Wilshire building with 1.7 acres of garden open space
22 that is generally open to the public subject to reasonable restrictions determined
23 by the property owner.”

24 29. When an advertisement is in audio format only (radio, telephonic,
25 etc.), the government's entire message must be read aloud "so as to be clearly
26 audible and understood by the intended public and otherwise appropriately
27 conveyed for the hearing impaired." *Id.* § 1-8-5 (E). All video advertisements
28 (including television) must dedicate 50% of their time to displaying the

1 || disclaimer. *Id.*

2 30. The ordinance provides for significant criminal penalties, including
3 potential jail sentences for responsible individuals. *Id.* § 1-8-7 (B). The
4 ordinance imposes potential joint and several liability on a committee and its
5 “treasurer, any principal officers, and any person primarily responsible for the
6 preparation of any advertisement.” *Id.* § 1-8-7 (A).

7 31. The ordinance also contains a citizen-enforcement provision which
8 permits any resident of Beverly Hills to enforce the ordinance civilly. *Id.* § 1-8-7
9 (C).

Severe Burdens Imposed By Disclaimer

11 32. As a result of the ordinance, Plaintiff's advertisements must now
12 contain the following statement:

This communication is presented and paid for by Residents for The Beverly Hills Garden & Open Space Initiative, with major funding by Oasis West Realty LLC / The Beverly Hilton. These donors are listed in descending order of contribution amount. More current information regarding the sources of funding for this election campaign is available at www.beverlyhills.org. (“An initiative measure to amend the Beverly Hilton Specific Plan to combine the 8 story Wilshire condominium building with the 18 story Santa Monica condominium building resulting in one 26 story building with additional height and to replace the Wilshire building with 1.7 acres of garden open space that is generally open to the public subject to reasonable restrictions determined by the property owner.”)

1 33. Upon the Beverly Hills City Council's vote on Tuesday, July 19,
2 2016, the ordinance became applicable to Plaintiff's advertisements. As a result,
3 the government's massive message must now appear in all of Plaintiff's
4 advertisements, substantially limiting Plaintiff's ability to engage in advertising
5 activities and foreclosing it from using some of the most common methods of
6 campaign advertising all together.

7 34. For example, application of the ordinance in this fashion will
8 eliminate Plaintiff's ability to run radio ads.

9 35. Radio ads are among the most common forms of political
10 communication used in municipal politics, and they are typically purchased and
11 sold as 30-second spots. That duration is particularly effective because it
12 facilitates cost-effective repetition.

13 36. Plaintiff wants to make use of 30-second ads and had planned to
14 make them a significant component of its advertising strategy going forward.

15 37. However, reciting the required disclaimer with the clarity that the
16 ordinance requires is impossible in 30 seconds, even for radio professionals.
17 Thus, airing its planned 30-second ads would require Plaintiff to purchase ads of
18 *at least* 60 seconds. This would significantly increase cost. As a result, the
19 ordinance will allow Plaintiff to use significantly less total radio advertising time
20 than it intended and achieve far less repetition, greatly inhibiting Plaintiff's ability
21 to communicate its message.

22 38. Plaintiff's ability to advertise in print is also severely burdened.
23 Print ads are produced in a variety of sizes, and among the most common is a 4 x
24 6 inch post card which is sent to voters via direct mail. Such post cards are a
25 staple of advertising campaigns in municipal elections, and Plaintiff had planned
26 to make them an essential component of its campaign going forward.

27 39. As with 30-second radio ads, however, the ordinance essentially
28 renders post cards useless. Printing the full disclaimer in the 14-point font that

1 the ordinance requires would occupy roughly *two thirds* of the space on the main
2 side of the card. And because addressing information appears on the reverse side,
3 there would be little, if any, space left to communicate a message—much less to
4 do so effectively.

5 40. Application of the ordinance also substantially burdens television
6 ads. Like radio ads, television ads are typically purchased and sold in 30-second
7 spots. Plaintiff made use of television ads at earlier stages of this campaign, and
8 wants to continue to do so. Television ads are particularly important in the
9 context of *this* campaign, as they represent the best way for Plaintiff to
10 communicate a visual representation of the proposed land use changes to the
11 voters, which Plaintiff believes will go a long way towards enlisting public
12 support.

13 41. Complying with the ordinance would force Plaintiff to display the
14 required disclaimer *over* the visual content of its television advertisements for 15
15 of the advertisements' 30 total seconds (*i.e.*, half of the airtime purchased by
16 Plaintiff). To comply with the ordinance's font size requirements, the disclaimer
17 would have to occupy much of the screen, greatly interfering with the intended
18 visual message.

19 42. As a result of these burdens, Plaintiff has severely curtailed its
20 advertising efforts. For example, Plaintiff is currently holding off on producing
21 and running television and radio ads, and is not sending out any additional
22 mailers. If the ordinance is enjoined, Plaintiff will immediately begin
23 implementing its advertising strategy in these mediums.

24 43. The election is on November 8, 2016, just a few months away.
25 Every day that Plaintiff's political speech is chilled diminishes the likelihood that
26 Plaintiff will be able to successfully reach enough voters to persuade them to vote
27 in favor of the Initiative.

28

FIRST CLAIM FOR RELIEF

(As-Applied Violation of the First Amendment of the United States

Constitution and 42 U.S.C. § 1983: Exacting Scrutiny)

4 44. The allegations of paragraphs 1 through 43 above are incorporated
5 by reference as though fully set forth herein.

6 45. The severely burdensome government-prescribed message mandated
7 by the ordinance constitutes a clear “as applied” violation of the First Amendment
8 to the United States Constitution.

9 46. There is no valid constitutional justification for the serious burden
10 and encroachment on Plaintiff's protected political speech. Countless state and
11 local governments across the country require disclosures or disclaimers on
12 political advertising, but do so without such government messages occupying
13 such extensive portions of the advertisements.

SECOND CLAIM FOR RELIEF

(Facial and As-Applied Violation of the First Amendment of the United States Constitution and 42 U.S.C. § 1983: Strict Scrutiny)

17 47. The allegations of paragraphs 1 through 43 above are incorporated
18 by reference as though fully set forth herein.

19 48. The ordinance's "official title" requirement operates as a prior
20 restraint on speech, because ballot measure committees subject to the ordinance
21 cannot engage in political advertising until the City Attorney sets an official ballot
22 title.

23 49. Because the ordinance sets no objective standard to limit the City
24 Attorney's discretion in drafting the official title, the ordinance does not compel
25 ballot measure committees to repeat purely factual and non-controversial
26 information. Instead, it compels them to repeat Defendant's subjective message.
27 The ordinance's title requirement is therefore subject to strict scrutiny. The
28 ordinance's title requirement fails strict scrutiny because it is not narrowly

1 || tailored to serve any compelling government interest.

2 50. As applied to Plaintiff, the ordinance's title requirement is invalid
3 under the First Amendment to the U.S. Constitution. And because a substantial
4 number, if not all, applications of the title requirement would be unconstitutional,
5 the ordinance's title requirement is overbroad and therefore facially invalid as
6 well.

PRAYER FOR RELIEF

8 | WHEREFORE, Plaintiff prays as follows:

9 1. For immediate issuance of a temporary restraining order prohibiting
10 the City, and its agents, representatives, employees, and all persons aiding the
11 City or acting pursuant to its direction and control, from taking any steps to
12 enforce Beverly Hills Municipal Code §§ 1-8-5 (C)-(F) against Plaintiff
13 (including its treasurer, principal officers, and persons primarily responsible for
14 the preparation of its advertisements) with respect to advertisements concerning
15 the Initiative, and from taking any steps to enforce Beverly Hills Municipal Code
16 § 1-8-5 (F) against any person or entity;

17 2. For a preliminary injunction prohibiting the City, and its agents,
18 representatives, employees, and all persons aiding the City or acting pursuant to
19 its direction and control, from taking any steps to enforce Beverly Hills Municipal
20 Code §§ 1-8-5 (C)-(F) against Plaintiff (including its treasurer, principal officers,
21 and persons primarily responsible for the preparation of its advertisements) with
22 respect to advertisements concerning the Initiative, and from taking any steps to
23 enforce Beverly Hills Municipal Code § 1-8-5 (F) against any person or entity;

24 3. For a permanent injunction prohibiting the City, and its agents,
25 representatives, employees, and all persons aiding the City or acting pursuant to
26 its direction and control, from taking any steps to enforce Beverly Hills Municipal
27 Code §§ 1-8-5 (C)-(F) against Plaintiff (including its treasurer, principal officers,
28 and persons primarily responsible for the preparation of its advertisements) with

1 respect to advertisements concerning the Initiative, and from taking any steps to
2 enforce Beverly Hills Municipal Code § 1-8-5 (F) against any person or entity;

3 4. For a declaration under 28 U.S.C. § 2201(a) that Beverly Hills
4 Municipal Code §§ 1-8-5 (C)-(F) violates the First Amendment to the United
5 States Constitution, and 42 U.S.C. § 1983, as-applied to Plaintiff.

6 5. For a declaration under 28 U.S.C. § 2201(a) that Beverly Hills
7 Municipal Code § 1-8-5 (F) facially violates the First Amendment to the United
8 States Constitution, and 42 U.S.C. § 1983.

9 6. For costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C.
10 § 1988(b); and

11 7. For such other relief that the Court deems just and equitable.

12 | Dated: July 25, 2016

Respectfully submitted,

/s/ Benjamin Hanelin

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