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Attn.: Oshawa City Council  
50 Centre Street South  
Oshawa ON L1H 3Z7

To the Oshawa City Council:

**Re: CF-23-34 - Review and Proposed Replacement of the Election Sign By-law (All Wards)**

I am concerned about the proposed election sign by-law contained within the above Public Report, and being recommended for the City Council to adopt as a replacement to the current election sign. After reviewing it, it appears that it will significantly infringe on the freedom of expression of Oshawa's electors with little rationale for doing so.

Any non-violent attempt to convey a meaning automatically engages s. 2 (b) of the *Canadian Charter of Rights and Freedoms* (see *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927). This would include election signs. An effort by the government to limit s. 2 (b) must be for a pressing and substantial objective, and it must be rationally connected to the objective, impair the affected *Charter* right as little as possible, and there must be proportionality between the effects of limiting the *Charter* right and the pressing and substantial objective (see *R. v. Oakes*, [1986] 1 S.C.R. 103).

Below, I will discuss all of the aspects of the law that seem to offend the above based principles, or are otherwise questionable.

**Blanket Ban on Signage on Public Property**

The definition of "election sign" in s. 1.1 (m) of the proposed by-law would cover posters. All election signs, and thus all posterage, is to be banned on public property. The Supreme Court of Canada has already ruled that an absolute prohibition on posterage on public property is unconstitutional in that it infringes on s. 2 (b) of the *Charter* and cannot be saved by s. 1. This has been the law for thirty years. See *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084.

Such a law would also be unfair had it been in place in the last election. The purpose of placing election signs on public property is to increase the name recognition of candidates for people who use those public spaces. In the Summer of 2022, during the most recent municipal election, I can recall at least three municipally-authorized events in Memorial Park that featured incumbent council candidates. Prohibiting candidates from placing election signage in public spaces such as that would effectively allow better-connected candidates, and in particular incumbents, to use such spaces to increase their name recognition while denying it to the individuals challenging them.

### **Ban on Use of Word “Re-elect” by Non-Incumbents**

Subsection 3.13 (o) prohibits the use of the word “re-elect” by anyone other than a current office holder. So, if a candidate last held the office two elections ago, they would be prohibited from referring to their previous experience and asking electors to re-elect them to the officer. This seems to clearly favour incumbents and ban even truthful statements by candidates. I cannot see how it is a reasonable limit on a person’s freedom of expression and I question whether the province even intended to delegate such a power to regulate the content of signage in elections to municipalities. One would think the province would have included content-based prohibitions in the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched. if it intended to regulate content of signage, and even then, such a law banning truthful statements by candidates and reserving certain phrases to incumbents would be challenged in the courts.

### **Ban on Posting Support for More than One Candidate**

Sections 3.3 and 3.6 of the proposed by-law prohibit having signage on a per-candidate basis. Residential properties are restricted to supporting one candidate per office with signage and non-residential properties are restricted to three per candidate.

Firstly, there is no rationale for prohibiting supporting more than one candidate from a visual candidate. During the last election, I have four signs on my property, two of which supported different candidates for the same office because I thought they both deserved consideration. I did not have signage regarding a number of other elected offices. So, even though I was under the maximum signage I could have if this proposed by-law were in effect, I would have been committing an offence by having a sign for two different candidates. Obviously, this has nothing to do with the issue of visual blight and so I cannot see what objective is served by such signage.

Secondly, this law effectively requires households to support only one candidate per office when posting their signs. This may come as a shock, but not everyone in the same household has to vote for or support the same candidate. Imagine that two spouses are on title to the same property and each support a different mayoral candidate. What will they do to decide whose candidate gets to be publicly supported with their signage allowance and who must remain silent? Flip a coin?

If the purpose of this regulatory legislation is to prevent visual blight, and not to engage in restraining people’s actual political views, such as that more than one candidate might be suitable for consideration for office (the latter seems like it would not meet the *Oakes* test), it can be achieved by simply limiting the *number* of signs on a property during an election and not the *content* of those signs.

### **Ban on Supporting Out-of-Ward Candidates**

Sections 3.10 and 3.11 prohibit posting signs on a person’s property that relate to an election except that within the boundaries of the ward or riding to which the election sign relates.

What if a person supports none of the candidates in their own ward but happens to support a candidate in another ward and hopes that people from that ward who drive or walk by their property will see a sign supporting that candidate and consider voting for them? Again, the combating of visual blight is not served by content-based restrictions instead of restricting the time, place, and manner of displaying signage, and I cannot see how this is a reasonable limit on a *Charter* right if the municipality could not prohibit a person from verbally advocating for out-of-ward candidates to be elected.

### **Odd Reference to the *Criminal Code***

Section 3.7 of the proposed by-law states, “Pursuant to the Criminal Code R.S.C., 1985, c.C-46, it is an offence to deface, alter, interfere with or willfully cause damage to an Election Sign.”

I am unsure why this language is even included in the by-law. The municipality cannot amend the criminal laws of Canada so not including it in the by-law would not have any different impact on whether certain activities in relation to signs are criminal offences.

Is the section supposed to be legal advice? No reference is made to what section or sections of the *Criminal Code* apply to prohibit this activity, and there are numerous situations in which engaging in the activity described might not be a prohibited act (for example, a property owner who “interferes” with an election sign that has been unlawfully placed on that property owner’s property by a trespasser would be entirely within their rights when removing it and not committing a criminal offence).

### **Summary**

There are many issues I have spotted with the election by-law that I believe constitute an unacceptable restriction of the civil liberties of Oshawa’s electors, favour incumbents, or constitute an excess of the City’s jurisdiction to enact municipal by-laws. However, I have only discovered this proposed by-law last minute so I have not included them. In summary, as an elector and property owner affected by this draft by-law, I believe:

- A by-law should not contain an absolute prohibition on election signage in public spaces. It should especially not ban candidates from advertising in public spaces that incumbents attend at events during the election.
- A by-law should not restrict candidates from making truthful statements about how they have previously held an office and are asking to be re-elected to that office.
- A by-law should not prohibit members of a household from posting signage that supports more than one candidate for the same office.
- A by-law should not contain vague references to criminal law, which municipalities have no power to amend anyway.
- A by-law should be focused only on visual blight and not regulating the content of signage.
- A by-law enacted by a City Council should be carefully considered to avoid favouring all of the incumbents who are voting on whether to enact it and be as neutral as possible.

Thank you for your consideration of the above.

Sincerely,  
Marty Gobin, B.S.L.S., LL.B., LL.M.  
Barrister & Solicitor