WESTTOWN TOWNSHIP
PLANNING COMMISSION MEETING AGENDA
Wednesday, December 18, 2024 – 7:00 pm

Stokes Assembly Hall – Township Administration Building
1039 Wilmington Pike, West Chester, PA

For general inquiries or questions about any of the items on this agenda, please contact the Township office either by phone (610) 692-1930 or via e-mail at administration@westtown.org.

Call to Order and Pledge of Allegiance

Adoption of Agenda

Approval of Minutes
Planning Commission Meeting December 4, 2024

Announcements

Public Comment – Non-Agenda Items

New Business

1. **2024 Projects - Summary**
   Update on the status of land development projects for the past year.

2. **Pennsylvania Supreme Court Case – Oberholzer v. Galapo**
   Overview of the Pennsylvania Supreme Court Case of Oberholzer v. Galapo that dealt with the issue of defamation and the legal validity of claims involving yard signs. The case primarily revolves around a dispute between two neighbors and whether a defamatory statement made through a yard sign can form the basis for a lawsuit.

Old Business

1. **Ordinance Amendments – Fences**
   The Commission continues its discussion on potential changes to Section 1505, Fences and walls, of the Zoning Ordinance.

2. **Ordinance Amendments – Signs**
   The Chester County Planning Commission has reviewed the proposed 2024-08 Zoning Ordinance amendments pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Section 609(e) and issued a review letter. The Planning Commission's feedback is requested.

Public Comment

Reports

1. Board of Supervisors Meeting December 16, 2024 – Jim Lees/Russ Hatton

Adjournment

Next PC Meeting:

- **January 8, 2024, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Monday January 6, 2024, 7:30 PM** – TBD

1

FREDERICK E. OBERHOLZER, JR. AND DENISE L. OBERHOLZER, Appellees
v.
SIMON AND TOBY GALAPO, Appellants

No. 104 MAP 2022

No. J-51-2023

Supreme Court of Pennsylvania

August 20, 2024

ARGUED: October 17, 2023

Appeal from the Order of the Superior Court at No. 794 EDA 2020 dated April 18, 2022, Vacating the judgment of the Montgomery County Court of Common Pleas, Civil Division, entered April 1, 2020, at No. 2016-11267 and Remanding. (The order of the Superior Court dated April 5, 2022, withdrew the March 7, 2022, memorandum.)

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

OPINION

DOUGHERTY, JUSTICE.

"Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and . . . inflict great pain." *Snyder v. Phelps*, 562 U.S. 443, 460-61 (2011). Presently, we must determine whether signs decrying hatred and racism, placed by a Jewish family on their own lawn after a neighbor called one of them a "fucking Jew," were properly enjoined by the trial court. Our review requires close inspection of the contours of the free speech provision found in Article I, Section 7 of the Pennsylvania Constitution, and our careful examination leads us to conclude the injunction order in this case violates our organic law.

2

I. Factual Background

Dr. Simon and Toby Galapo (appellants) own a home in Abington Township, Montgomery County, the rear yard of which borders the property of Frederick and Denise Oberholzer (appellees). Although the properties are separated by a creek, low-lying shrubs, and some tall trees, the houses and yards remain visible to one another. In November 2014, a brewing feud between the neighbors over landscaping issues reached a boiling point after Dr. Galapo confronted Mr. Oberholzer about a resurveyed property line and Mrs. Oberholzer responded by calling him a "fucking Jew."[1] This prompted the Galapos in June 2015 to erect the first of many signs primarily displaying anti-hate and anti-racist messages "along the back tree-line directly abutting [the Oberholzers'] property line, pointed directly at [the Oberholzers'] house, and in direct sight of [other] neighbors' houses." Amended Complaint, 7/5/16, at ¶12. All told, the Galapos posted twenty-three signs over a years-long span, during which the neighbors continued to quarrel over other minor nuisances.[2]

On June 7, 2016, the Oberholzers filed a civil complaint, which they amended on July 5, 2016. The amended complaint pleaded five causes of action: (1) private nuisance;

3

(2) intrusion upon seclusion; (3) defamation - libel and slander; (4) publicly placing the Oberholzers in false light; and (5) intentional infliction of emotional distress. *See*

4

Amended Complaint, 7/5/16, at ¶¶65-109. The central theme underlying all claims was that the "signs were placed solely to harass, slander and defame [the Oberholzers], who are German by descent, by the Galapos, who putatively are Jewish by descent." *Id*. at ¶14. According to the Oberholzers, the "signs are so content-incendiary as to incite hatred, ridicule and disgust[.]" *Id*.; *see id*. at ¶13 (signs "consist of hate speech, slander and defamatory, unfounded innuendo and slurs directed openly and

notoriously towards [the Oberholzers] and their property").[3]

Notably, as to the first four causes of action, the Oberholzers claimed "money damages would be inadequate to remedy [their] injuries and damages, and would be inadequate to prevent similar future harm and conduct by [the] Galapos." *Id*. at ¶¶73, 81, 91, and 102. In this regard, the Oberholzers asserted they "will be forced in the future to suffer irreparable harm in not being able to use their property free from the continued threats, action, behavior and conduct of [the] Galapos[,]" and that "such threats, action, behavior and conduct [by them] could never outweigh the interests [the Oberholzers] have in the use, privilege, occupation and enjoyment of their property free from [the] Galapos' conduct." *Id*. So, with respect to those claims, the Oberholzers sought equitable relief in the form of an order enjoining the Galapos from "posting and publishing hate-signs

5

containing false, incendiary words, content, innuendo and slander," as well as "signs containing open and notorious incendiary racial and ethnic slander, or any signs about [the Oberholzers] at all[.]" *Id*.

Separately, on July 13, 2016, the Oberholzers filed a "Petition for Preliminary and/or Special Injunctive Relief Pursuant to Pa.R.Civ.P. 1531." Therein, they sought an order "requiring [the] Galapos to immediately remove all signs" and "placards . . . placed on [the] Galapos' property facing or directed against the Oberholzers and their property and home[.]" Petition for Injunctive Relief, 7/13/16, at 1. The Oberholzers averred an injunction was warranted to protect their "constitutional rights . . . to live, and exercise their liberty and property interests, free from such libel and defamation[.]" *Id*. at 13. In response, the Galapos claimed the Oberholzers' "request for injunctive relief must be denied because such an injunction would constitute [a] prior restraint, which is prohibited by . . . Article I, Section 7, of the Pennsylvania Constitution." Memorandum in Support of Response to Petition for Injunctive Relief, 7/25/16, at 8 (unpaginated).

On August 26, 2016, the parties entered a temporary consent order in which the Galapos agreed to remove their signs (except for the "No Trespassing" sign and the sign warning of surveillance on their property) pending the outcome of a hearing for preliminary injunctive relief.

At that hearing, the Oberholzers' counsel clarified that, despite seeking injunctive relief as to multiple claims in the amended complaint, in fact, the preliminary "injunction is only on count four of this complaint" - *i.e.*, the false light claim. N.T. Preliminary Injunction Hearing, 10/18/16, at 8; *see id*. at 195 (stating the petition "focuses only on count four of this complaint, not one, not two, and not three [or five]"). As counsel explained it, injunctive relief on that sole claim would be appropriate since a "false light claim does not involve defamation." *Id*. at 10; *see id*. ("I don't care if it's a placard, a sign,

6

a note, a letter, a musical note, whatever it could be, it's not a speech issue. The Restatement doesn't talk about [a false light claim] as speech."). The Galapos' counsel, meanwhile, argued injunctive relief would be an inappropriate remedy for any of the causes of action alleged in the complaint. *See id*. at 14-15 ("Even if it were something that is defamatory or false light, my clients still have their [constitutional] rights to post those signs. They may be civilly liable for it in terms of damages later on, but that's their right, as long as they're willing to accept those consequences.").

The parties then testified. Dr. Galapo first explained his intent behind his posting of the signs: he "want[s] people to understand what happens with racism." *Id*. at 54. For example, he posted the sign stating "Hitler Eichmann Racists" because Adolf Hitler and Adolf Eichmann represent "the consequence of where racism goes and where anti-Semitism goes and how it affects people and how it kills people." *Id*. at 34. Similarly, Dr. Galapo elaborated that he

posted the "Woe to the Racists[,] Woe to the Neighbors" sign because it implies "there's a deficiency in the one who is racist and it . . . affects the neighbors as well. And this can be taken both on a community level, on an individual level, as well as on a worldwide level." *Id*. at 43-44.

At the same time, Dr. Galapo described how he also wants to specifically "protest" the Oberholzers' behavior. *See, e.g.*, *id*. at 41 ("what I want to accomplish by the signs is to protest behavior which we perceive as being racist towards myself, my wife, and my family"); *id*. at 57 ("That is my intent of the sign [regarding 1.5 million butchered children during World War II], to protest racist behavior, because that's where it ends up."); *id*. at 58 ("I want the Oberholzers to see the signs and see where their actions have taken it."); *id*. ("The intent of the signs w[as] for the Oberholzers to change a behavior which we perceived as being racist[.]"); *id*. at 61 ("And I want to teach my children that when racism rears its head, you have to fight it tooth and nail."). To that end, Dr. Galapo explained his

view that "signs in general . . . are there to change behavior, to make you aware of what's going on, of what people are doing[.]" *Id*. at 85. He noted how their previous attempts to resolve their disputes with the Oberholzers through a community affairs group and the local police had been unsuccessful after those entities told them "they can't change people's behaviors." *Id*. at 59. From Dr. Galapo's perspective, then, the signs were the only way they "could respond to anything that was going on." *Id*. at 50; *see id*. at 54 (stating he faced the signs towards the Oberholzers because "that's . . . where the greatest threat is").

For his part, Mr. Oberholzer testified he could see "[n]othing but signs" when he looked out the back windows and door of his home's Florida room. *Id*. at 150. Regarding the content of the signs, he explained: "Some of them are truth[ful.] Some of them, I don't know what they mean." *Id*. at 175. He further noted the signs could be seen from the sidewalk and that passersby would stop to read them. *See id*. at 113-14, 121. According to Mr. Oberholzer, although no one has told him they believe he's a racist, some "people have stopped talking to" him, presumably because of the signs. *Id*. at 176.

Following the parties' testimony, counsel rehashed their central arguments for the trial court. The Oberholzers' counsel maintained an injunction was warranted because "the false light case is not speech." *Id*. at 201. Conversely, the Galapos' counsel argued: "Whether it is defamation or . . . false light, the issue . . . is whether my clients can post signs with written words on them on their own property." *Id*. at 209-10. In counsel's view, written words are "the same as verbal speech." *Id*. at 210; *see id*. ("Speech is speech is speech[.]"). Counsel also advocated that, even though the Galapos could be held civilly liable for damages, they still "have the right to make [such] speech" in the first instance "per Article I, Section 7 of the Pennsylvania [ ] Constitution." *Id*. at 213.

Subsequently, the parties submitted to the trial court supplemental filings on the preliminary injunction issue. In their filing, the Oberholzers seized upon Dr. Galapo's repeated use of the word "protest" during his testimony to argue that the Galapos' "actions and conduct in posting these denigrating, scornful hate signs amounts to *prima facie*, good old-fashioned picketing." Supplemental Petition for Preliminary Injunction, 11/3/16, at 4. To the Oberholzers, "[i]nvasive, notorious picketing of a private residence enjoys no legal safe-harbor or [constitutional] protection[.]" *Id*. Rather, "[u]nwelcome, unwanted speech that a private homeowner cannot escape, that intrudes privacy and destroys a quiet, decent lifestyle . . . can be (and must be) outright banned." *Id*. at 4-5; *see id*. at 12-13 ("Picketing - open, notorious protesting - that is harassing and invasive of the privacy of another can be enjoined[.]").[4]

In reply, the Galapos said the Oberholzers wrongly portrayed their signposting as an expressive activity akin to picketing. They countered that "the signs at issue constitute

'pure speech[.]'" Supplemental Response to Petition for Preliminary Injunction, 11/10/16, at 6 (unpaginated); *see id*. ("Placing signs on one's own property, and nothing more, does not involve any acts which could be considered 'expressive conduct.'"). To buttress their position the signs constitute pure speech, the Galapos observed that the Oberholzers variously referred to them "as 'hate signs,' 'scornful,' 'reprehensible,' and 'highly offensive to a reasonable person,' among other things." *Id*. at 6-7. Such language, they argued,

clearly demonstrates the Oberholzers simply "do not like **the content** of those signs" as opposed to some physical aspect about them, like their dimensions or quantity. *Id*. at 6 (emphasis added); *see id*. at 7 ("Surely, such an injunction would not be intended to apply to a 'for sale' sign, a 'caution' sign relating to the use of [the Galapos'] pool, holiday decoration[s], or a political sign supporting one of the presidential candidates."). Moreover, the Galapos reiterated their belief that, if they "cannot post signs on their own property, . . . they have no alternative location to 'protest' [the Oberholzers'] actions." *Id*. at 8. Finally, the Galapos stressed the fact that no Pennsylvania court has ever suppressed speech "to prevent another from being placed in a false light[,]" and they argued that doing so "would constitute [an] impermissible prior restraint under Article I, Section 7 of the Pennsylvania Constitution[.]" *Id*. at 11.

The trial court denied the petition for preliminary injunctive relief on November 21, 2016. The Oberholzers then took a short-lived appeal of that decision. In a Pa.R.A.P. 1925(a) opinion prepared for that appeal, the court explained the Oberholzers "failed to show, at least sufficiently to warrant the extraordinary relief of issuing a preliminary injunction, that [the Galapos'] sign-posting was actionable as an invasion of privacy portraying [the Oberholzers] in a false light, that their right to relief was clear, and that the wrong was manifest, or, in other words, that [the Oberholzers] were likely to prevail on the merits of their false-light cause of action." Trial Court Op., 4/28/17, at 8. Significantly, the court opined that it had constitutional concerns about "enjoining what was, on some levels, pure speech[.]" *Id*. The court further remarked that it was "uncertain" whether the Oberholzers could prevail on the merits of their false light claim considering the testimony given. *Id*.

Around the same time the Oberholzers took that appeal, the trial court overruled the Galapos' preliminary objections. The Galapos thereafter filed an answer to the

amended complaint and proceeded with discovery. Notably, during their depositions, the Oberholzers conceded none of the signs mentioned them by name, were threatening, or encroached their own property. *See* N.T. Deposition of Denise Oberholzer, 3/13/18, at 42-43; N.T. Deposition of Frederick Oberholzer, 3/13/18, at 29-30.

Following discovery, and after the Oberholzers discontinued their appeal of the order denying preliminary injunctive relief, the parties proceeded to file cross-motions for summary judgment.[5] On September 6, 2018, the trial court granted in part and denied in part the Galapos' motion. Specifically, it dismissed with prejudice the intrusion upon seclusion cause of action contained in the second count of the amended complaint but denied the balance of the Galapos' motion for summary judgment; it also denied in full the Oberholzers' cross-motion.

On June 4, 2019, the parties appeared before the trial court for a settlement conference hearing. They explained they'd "reached an agreement that in connection with . . . all affirmative claims in the complaint for all damages, [the Galapos] would pay" the Oberholzers a certain monetary amount. N.T. Settlement Conference Hearing, 6/4/19, at 2. The next day, the court accepted the settlement agreement, the relevant portion of which provides:

> [I]n return for the payments described in Paragraph 1 above

> further subject to the provisions of paragraph 6, and for the mutual promises contained herein, the Oberholzers . . . do hereby release, acquit, exonerate, and
>
> 11
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> forever discharge the Galapos . . . from all and every manner of action . . . **arising from the posting of signs on the Galapos' property containing the statement**s and/or communications enumerated specifically in paragraph 5 in the past, present or future.

Confidential Settlement Agreement, 6/5/19, at ¶4 (emphasis added).

The settlement agreement did "not prohibit, limit or affect [the Oberholzers'] rights to seek and/or pursue their claim in equity for injunctive relief . . . prohibiting the present and/or future posting of signs on [the Galapos'] property enumerated specifically in paragraph 5[.]" *Id*. at ¶6. Moreover, although the Galapos in the agreement did "not admit any wrongdoing or liability," they agreed not to argue, in opposing the Oberholzers' request for permanent injunctive relief, that the Oberholzers "failed to succeed on the merits of their claim for such relief." *Id*.

The parties stipulated that, in ruling on the request for a permanent injunction, the trial court would consider certain deposition transcripts, the preliminary injunction hearing transcript, and select exhibits. The court also heard oral argument. Thereafter, on September 12, 2019, the court entered an order granting in part the Oberholzers' request for a permanent injunction. More precisely, the court permitted the signs already posted on the Galapos' property to remain but directed that they "be positioned in such a way that they do not directly face and target [the Oberholzers'] property: the fronts of the signs (lettering, etc.) are not to be visible to [the Oberholzers] nor face in the direction of [their] home." Order, 9/12/19, at 1.

In an accompanying opinion, the court explained an injunction is appropriate where the party seeking it establishes a "right to relief is clear, [it] is necessary to avoid an injury that cannot be compensated by damages, and [ ] greater injury will result from refusing rather than granting the relief requested." Trial Court Op., 9/12/19, at 5, *citing Kuznik v. Westmoreland Cty. Bd. of Comm'rs*, 902 A.2d 476, 489 (Pa. 2006). The court found the Oberholzers met all criteria. *See id*. at 7 (concluding, "[d]espite the monetary settlement

12

reached between the parties," that the Galapos' "actions severely and negatively impact [the Oberholzers'] well-being, tranquility, and quiet enjoyment of their home"); *id*. at 8 (finding the Oberholzers "have no adequate remedy at law" and "a greater injury of a continuing intrusion on [their] residential privacy will result from refusing to grant the equitable relief sought and allowing the existing signs to remain as they are").

The trial court next addressed the Galapos' free speech arguments. It identified the issue before it as "whether the First Amendment of the U.S. Constitution and Article I, Section 7 of the Pennsylvania Constitution permit[ ] this court to enjoin [the Galapos] from posting signs on their property denouncing hatred, racism and anti-Semitism in their effort to change the perceived offensive behavior of [the Oberholzers]." *Id*. at 5. The court then summarized the parties' core positions as follows:

> **[The Oberholzers] argue that the [Galapos'] posting of signs on their property, in the manner in which they have, amounts to**

> **picketing[.] . . . They further argue that the picketing is designed to inflict psychological harm on their family, rather than convey a message of a particular belief or fact, and therefore is expressive conduct which, under the circumstances, is not constitutionally protected.**
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> **The [ ] Galapos argue that the posting of signs that disseminate views on racism and Hitler are to be considered pure speech and therefore entitled to the utmost constitutional protection. They also argue that this cannot be considered picketing[.]**

***Id*. at 8.**

In the end, the trial court agreed with the Oberholzers that the Galapos' actions "cannot be considered pure speech[.]" *Id*. at 10. Instead, it viewed the Galapos' actions "as a personal protest" because "[t]he personal and specific messages of the signs are for the alleged racist behavior exhibited by [the Oberholzers], not racism generally existing in society." *Id*. at 9; *see id*. ("The placement of the signs indicates [the Galapos are] targeting specific individuals [to] decry their perceived racist behavior."); *id*. at 10 (determining the present circumstances "are analogous to the targeted picketing seen in"

13

***Frisby v. Schultz*, 487 U.S. 474 (1988)). Based on that characterization, the trial court determined "the strongest constitutional protection is no longer warranted." *Id*. at 10, *citing Rouse Phila. Inc. v. Ad Hoc '78*, 417 A.2d 1248, 1254 (Pa. Super. 1979) ("as a person's activities move away from pure speech and into the area of expressive conduct they require less constitutional protection"). The court further found the Galapos' "severe interference with [the Oberholzers'] residential privacy justifies this [c]ourt taking action in the way of a time, place, and manner restriction." *Id*. at 11; *see S.B. v. S.S.*, 243 A.3d 90, 105 (Pa. 2020), *cert. denied*, 142 S.Ct. 313 (2021) (under First Amendment, time, place, and manner restrictions are valid "form of a content-neutral regulation of speech" if they "(1) are justified without reference to the content of the regulated speech; (2) are narrowly tailored to serve a significant governmental interest unrelated to speech; and (3) leave open ample alternative channels for communication of the information") (footnote and citation omitted).**

Addressing the last prong first, the court explained its "order still allows clear and numerous alternative channels of communication." Trial Court Op., 9/12/19, at 11; *see id*. (positing that the Galapos remain "free to continue to post signs on [their] property with any message [they] deem[ ] appropriate so long as they do not target or face [the] Oberholzers' property"). Turning back to the first prong, content neutrality, it stated: "With regard to the restriction being content neutral, the [c]ourt is being clear that all signs, no matter the language or images depicted, may remain but may not face or target the [ ] Oberholzers' property." *Id*. at 12. Lastly, the court declared the injunction was "narrowly tailored to serve the substantial government interest of protecting the [ ] Oberholzers' right of residential privacy." *Id*.; *see id*. at 10 ("the [c]ourt's duty to protect residential privacy is paramount").

14

One other aspect of the court's opinion is noteworthy. In a final section, titled "The Galapos' Arguable Defamatory Publications Will Not be Enjoined[,]" the court recognized citizens in this Commonwealth "are provided greater protection of their exercise of free speech under the Pennsylvania Constitution[.]" *Id*.

at 12, *citing William Goldman Theatres, Inc. v. Dana*, 173 A.2d 59, 62 (Pa. 1961) (Article I, Section 7 of the Pennsylvania Constitution "was designed to . . . prohibit the imposition of prior restraints upon the communication of thoughts and opinions, leaving the utterer liable only for an abuse of the privilege"). It specifically observed this Court has been critical of attempts by lower courts to carve out exceptions to the traditional rule that "equity lacks the power to enjoin the publication of defamatory matter." *Willing v. Mazzocone*, 393 A.2d 1155, 1158 (Pa. 1978) (plurality). Although the trial court found "the facts of this case are [not] strong enough to warrant a deviation from the traditional rule," it also did not think it had run afoul of the rule given that it "refused to issue a blanket injunction prohibiting all freedom of expression[.]" Trial Court Op., 9/12/19, at 12. In other words, the court believed its order instructing the Galapos to redirect their signs away from the Oberholzers' home, rather than remove them altogether, was a proper exercise of the court's equitable power that did not offend Article I, Section 7's prior restraint provision.[6]

Only days after the trial court granted permanent injunctive relief, the Oberholzers filed a petition to hold the Galapos in civil contempt, asserting that, while the Galapos had redirected the signs as ordered, the text remained visible from the Oberholzers' property.

15

After a hearing, the court declined to hold the Galapos in contempt but agreed to add the following language to its injunction order: "In order to ensure that none of the signs are visible regardless of their positioning, these signs shall be constructed with opaque material." Amended Order, 10/11/19, at 1.

The Galapos filed a motion for post-trial relief which the trial court denied following a hearing. After the Galapos filed an appeal, the court commented in its opinion that the case is one "of first impression because it concerns the Galapos' constitutional right to exercise freedom of speech in a residential context." Trial Court Op., 1/3/20, at 3. Still, the court defended its position "that when a citizen's exercise of [his or her] right to freedom of speech substantially impacts another citizen's private civil rights, that speech constitutes expressive activity and . . . may be subject to reasonable time, place and manner restrictions." *Id*. The court also maintained that, despite the monetary payment made to the Oberholzers under the settlement agreement, they "had no adequate remedy at law" given that the signs "interfered with [their] right to peaceful, tranquil enjoyment of their home." *Id*. at 4; *see id*. ("[T]o hold otherwise would give the Galapos the right to pay to continue to infringe on [the Oberholzers'] quiet enjoyment of their home."). The court thus viewed its order granting the permanent injunction as a proper "time, place, and manner restriction on the Galapos' right to freedom of expression that did not regulate the content of the signs[.]" *Id*.

In a published opinion, a split three-judge panel of the Superior Court vacated the trial court's amended order granting the permanent injunction in part and remanded for further proceedings. *See Oberholzer v. Galapo*, 274 A.3d 738, 768 (Pa. Super. 2022). Initially, the majority rejected the Galapos' argument that equitable relief was unavailable because there was another adequate remedy at law (*i.e.*, money), concluding "the parties

16

unequivocally agreed [in the settlement] that [the Oberholzers] could pursue injunctive relief notwithstanding any monetary payments[.]" *Id*. at 748.[7]

Next, the majority considered whether

the injunction imposed a prior restraint on the Galapos' speech in violation of the Pennsylvania Constitution. *See* Pa. Const. art. I, §7 ("The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."); *see Pap's A.M. v. City of Erie*, 812 A.2d 591, 605 (Pa. 2002) (Article I, Section 7 "provides protection for freedom of expression that is broader than the federal constitutional guarantee") (citation omitted). The majority noted this Court has identified as prior restraints those orders which "prevent[ ] publication of information or material[,]" whereas orders that do "not prevent [the] publishing [of] any information" or otherwise prevent an individual "from writing whatever they pleased" are not unlawful prior restraints. *Oberholzer*, 274 A.3d at 749, *quoting Phila. Newspapers, Inc. v. Jerome*, 387 A.2d 425, 432-33 (Pa. 1978).

The majority gleaned additional insight into what qualifies as a prior restraint from our decision in *Willing*. There, Helen Willing, believing two lawyers had skimmed from a workers' compensation settlement they secured on her behalf, demonstrated in the pedestrian plaza between two buildings in downtown Philadelphia for several hours a day wearing a "'sandwich-board' sign around her neck" with the following handwritten message: "LAW FIRM of QUINN MAZZOCONE Stole money from me and Sold-me-out-to-the INSURANCE COMPANY." *Willing*, 393 A.2d at 1156. The lawyers moved for injunctive relief against Willing, and the trial court granted it. The Superior Court affirmed but slightly modified the injunction to prohibit Willing from "further demonstrating against and/or picketing" her former lawyers by "uttering or publishing statements to the effect" that the lawyers stole money from her and sold her out to the insurance company. *Id*. at 1157 (internal quotations and citation omitted). On further review this Court reversed, concluding the lower courts' orders were "clearly prohibited" under Article I, Section 7's prior restraint provision. *Id*.

Based on this authority, the majority in this case did not "dispute that a permanent injunction can result in a prior restraint on speech." *Oberholzer*, 274 A.3d at 750. But it believed an order qualifies as a prior restraint only when it "forbid[s] future communications." *Id*. (emphasis in original), *citing, e.g., Golden Triangle News, Inc. v. Corbett*, 689 A.2d 974, 979 (Pa. Cmwlth. 1997) ("a prior restraint is a prohibition on speech in advance of its publication or expression") (emphasis supplied by majority below). Here, the majority reasoned, the permanent injunction "does not involve a prior restraint on speech"; "[r]ather, it addresses the existing signs, *i.e.*, preexisting, and not future, communications[.]" *Id*. (emphasis in original). Thus, because in its view "the permanent injunction does not affect future communications," the majority concluded the Galapos were "due no relief on this issue." *Id*. at 751.

The majority next moved to the Galapos' free speech claims and began by setting forth several guiding legal principles. The general rule, it noted, is that government cannot censor offensive speech in the open marketplace of ideas and the burden is on the viewer to avoid offensive speech. *See id*., *citing Snyder*, 562 U.S. at 459. However, the majority observed, "each medium of expression presents special First Amendment problems." *Id*. at 752, *quoting F.C.C. v. Pacifica Found*., 438 U.S. 726, 748 (1978). It likewise recognized "the subject matter of the speech may modify the analytical framework[,]" *id*., as may "the nature of the forum at issue[.]" *Id*. at 753 (citations omitted). So too may the "alleged

state action at issue" - "[f]or example, the analysis for a municipal ordinance is different than the analysis for a court injunction." *Id*. at 754, *citing, e.g., Madsen v. Women's Health Ctr., Inc.,*

18

512 U.S. 753, 764 (1994). With these background principles in mind, the majority proceeded to its analysis.

The majority first confirmed as a threshold matter that "state action is involved," explaining the trial court issued, at the Oberholzers' request, "injunctive relief that specifically ordered [the Galapos] to position the signs away from [the Oberholzers'] property with the front of the signs not visible to [them]." *Id*. at 757; *see id*. at 754 ("state action includes a court order that infringes upon speech and is issued at the request of a private party in a civil lawsuit"), *citing Madsen*, 512 U.S. at 764. Having resolved that preliminary issue, the majority proceeded to consider whether the order granting the injunction is content-based or content-neutral. It discussed at length several decisions in which this Court and the United States Supreme Court determined whether a particular restriction on speech was content-based or content-neutral, something that "is not always a simple endeavor." *S.B.*, 243 A.3d at 105; *see Oberholzer*, 274 A.3d at 754-57 (examining, *inter alia*, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015), *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997), and *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)). That review led the majority to conclude as follows.

First, it held "the trial court's order is facially content-neutral, as it is unrelated to the content of the speech." *Id*. at 758 (citation omitted); *see id*. at 757-58 (finding "the instant injunction was . . . without reference to the content or subject matter of the signs" and "serves a purpose unrelated to" that content since it "ensure[s the Oberholzers'] constitutional right of residential privacy") (internal quotations and citation omitted). Next, relying on two Superior Court decisions in which that court held "a complete bar on protesting without reference to the content of the defendant's speech was . . . a content-neutral restriction," the majority reasoned "a similar restriction preventing [the Galapos'] signs from being seen because [they] violated [the Oberholzers'] right to residential

19

privacy, is also content-neutral." *Id*. at 758, *citing SmithKline Beecham Corp. v. Stop Huntingdon Animal Cruelty USA*, 959 A.2d 352, 356-59 (Pa. Super. 2008) and *Klebanoff v. McMonagle*, 552 A.2d 677, 678-79, 682 (Pa. Super. 1988). Finally, the majority said "the United States Supreme Court has rejected [the Galapos'] argument that because the injunction restricts speech [the Oberholzers] find offensive, the injunction must be content-based." *Id*., *citing, e.g., Madsen*, 512 U.S. at 762 (refusing antiabortion protestors' argument that because injunction restricted their speech, it was "necessarily content or viewpoint based"; to accept that argument "would be to classify virtually every injunction as content or viewpoint based") and *Schenck*, 519 U.S. at 384 (injunction's "cease and desist" provision was content neutral despite banning only the speech of antiabortion protestors). Accordingly, the majority concluded the Galapos' "argument that the injunction is content-based is due no relief." *Id*.

The majority then considered the Galapos' final argument: that "even if the injunction is content-neutral, it still fails . . . to further a significant governmental interest" and, moreover, it "is not narrowly tailored." *Id*. at 758-59 (citations omitted). On this latter point, the Galapos "point[ed] out that the right to free speech protects

both the speaker's ability to convey their message and the speaker's ability to ensure the message reaches the intended recipients." *Id*. at 759 (citation omitted). They therefore contended that "if they cannot post signs protesting [the Oberholzers'] anti-Semitic behavior in a manner that can be seen by the intended recipients, *i.e.*, [the Oberholzers], [then they] have no alternative means of communicating their message." *Id*. (citation omitted). The Oberholzers countered that the signs are an unwanted invasion of their privacy in the occupancy of their home that have forced them to stop using their backyard or going outside. *See id*. Given this, they argued the court-ordered injunction is a proper time, place, and manner restriction that is narrowly tailored - particularly since the Galapos

20

are free to continue to post the signs on their property so long as they do not target or face the Oberholzers' home.

Once more, before conducting its analysis, the majority examined in depth the relevant law in this arena. *See id*. at 759-66 (discussing, *inter alia*, *Madsen*, *Frisby*, *Klebanoff*, and *SmithKline*). It then rejected the Galapos' argument that the injunction does not further a significant government interest. It explained that in *Frisby*, the High Court "remarked that all members of the community have a right to residential privacy, which includes the right to 'enjoy within their own walls . . . an ability to avoid . . . unwanted speech[.]'" *Id*. at 766, *quoting Frisby*, 487 U.S. at 484-85. And it noted the Superior Court "has similarly recognized this right and that courts may enjoin any activity violating an individual's right to residential privacy." *Id*., *citing Klebanoff*, 552 A.2d at 678 and *SmithKline*, 959 A.2d at 357-58. Based on this, the majority held a "right to residential privacy may be violated when a listener is subjected to targeted speech, including picketing and protesting." *Id*.

Nevertheless, the majority concluded the trial court wrongly applied the time, place, and manner test when it "should have applied the heightened, more rigorous standard under *Madsen* in tailoring its injunction." *Id*., *citing Madsen*, 512 U.S. at 765 ("when evaluating a content-neutral injunction [(as opposed to an ordinance)], we think that our standard time, place, and manner analysis is not sufficiently rigorous"; courts "must ask instead whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest"). Because the trial court "applied an incorrect legal standard," the majority held the proper course was to "vacate the trial court's judgment and amended injunction and remand for further proceedings." *Id*. at 766-68.

21

Judge Stabile concurred in the majority's "discussion and summary of applicable legal principles in its analysis" but dissented with respect to the decision to remand to the trial court. *Id*. at 768. In his view, a remand was "unnecessary because the relief ordered by the trial court comports with the applicable standard governing content-neutral injunctions that have the effect of restricting speech." *Id*.; *see id*. at 772 ("while the trial court improperly looked to a time, manner and place analysis in coming to the injunctive relief it ordered, the relief nonetheless burdened no more speech than necessary to serve the significant government interest in protecting the privacy of [the Oberholzers'] home" and, therefore, any error was "harmless").

We granted allowance of appeal to consider the following questions posed by the Galapos:

> **(1) Whether an injunction prohibiting ongoing publication**

constitutes an impermissible prior restraint under Article I, Section 7 of the Pennsylvania Constitution?

(2) Whether the publication of language which gives rise to tort claims other than defamation cannot be enjoined under Article I, Section 7 of the Pennsylvania Constitution?

(3) Whether the Superior Court committed an error of law by concluding that the injunction was content-neutral and therefore not subject to strict scrutiny?

***Oberholzer v. Galapo*, 286 A.3d 1232, 1233 (Pa. 2022) (*per curiam*).[8]**

II. Arguments

Pointing to the plain text of Article I, Section 7 of the Pennsylvania Constitution and this Court's decisions interpreting it, the Galapos begin by underscoring that the provision "was designed 'to prohibit the imposition of prior restraints upon the communication of

22

thoughts and opinions, leaving the utterer liable only for an abuse of the privilege.'" Galapos' Brief at 16, *quoting William Goldman Theatres*, 173 A.2d at 62. They then argue the Superior Court wrongly concluded the "injunction does not constitute a prior restraint because it addresses 'existing signs' and not 'future communications.'" *Id*. at 17. In the Galapos' view, since "the posting of the messages was ongoing, the signs are both existing communications, as well as future communications." *Id*.

The Galapos recognize no Pennsylvania court has addressed a scenario in which a defendant was "prohibited from repeating specific words already spoken or removing existing publications." *Id*. (emphasis in original). But, they submit, "federal courts with jurisdiction in Pennsylvania have considered such scenarios and, applying Pennsylvania law, have concluded that such injunctions run afoul of Article I, Section 7" and our decision in *Willing*. *Id*. at 17-19 (discussing *Tarugu v. Journal of Biological Chemistry*, 478 F.Supp.3d 552, 555 (W.D. Pa. 2020) (request for "permanent injunction enjoining [d]efendants from further displaying or disseminating the allegedly libelous [r]etraction and requiring [d]efendants to withdraw the [r]etraction, fails as a matter of law because 'equity will not enjoin a defamation' under Pennsylvania law") (citation omitted); *Puello v. Crown Heights Shmira, Inc.*, 2014 WL 3115156, at *2 (M.D. Pa. July 7, 2014) (asserting Pennsylvania follows "the majority rule that equity will not enjoin a libel") (internal quotations and citations omitted); and *Graboff v. Am. Ass'n of Orthopaedic Surgeons*, 2013 WL 1875819, at *5 (E.D. Pa. May 3, 2013) (concluding plaintiff sought "impermissible injunctive relief for a false light claim" after evaluating Pennsylvania law)).

The Galapos also fault the Superior Court for distinguishing *Willing* from the instant matter "when the fact patterns are so strikingly similar." *Id*. at 19. They argue both cases involve defendants who created signs that the plaintiffs objected to and, in both cases, "the courts, having reviewed the contents of the signs, entered injunctions to prohibit the

23

defendants from further making the objectionable statements." *Id*. at 20. The Galapos fail to see how the injunction in *Willing* was a prior restraint, yet the similar injunction in this case is not.[9]

Turning to the second issue presented,

the Galapos ask us to hold the publication of language which gives rise to tort claims other than defamation cannot be enjoined. *See id*. at 22. They explain that, since the time *Willing* was decided over forty years ago, no Pennsylvania court has considered whether its holding that defamation cannot be enjoined "extends to speech leading to tort claims besides defamation, *i.e.*, whether equity can enjoin speech where said speech placed someone in a false light, created a nuisance, invaded privacy, etc." *Id*. The Galapos rely once again on federal cases - particularly *Graboff*, *supra* - which have addressed such issues and ultimately predicted this Court "would adhere to the traditional, common-law principle that equity will not enjoin defamation, especially when a party has an adequate remedy at law in the form of money damages." *Id*. at 25. The Galapos conclude that, as these federal courts resolved, "it does not and should not matter whether a plaintiff bases his or her request for injunctive relief on allegations of defamation, false light, nuisance, or any other tort." *Id*. at 26. "Instead, it is the speech itself that is and must be protected." *Id*.

The Oberholzers retort that, while Article I, Section 7 prohibits prior restraints, "[n]ot all restrictions on speech constitute a prior restraint of that speech." Oberholzers' Brief at 15. For example, they observe this Court has previously remarked that an order that does "not prevent [the] publishing [of] any information" or prevent an individual "from

24

writing whatever they pleased" is not an unlawful prior restraint. *Id*., *quoting Phila. Newspapers, Inc.*, 387 A.2d at 433. On this score, the Oberholzers highlight the fact that the trial court "did not enjoin publication of any defamatory or libelous matter in restricting the placement of the content of the signs." *Id*. at 24.

As for *Willing*, the Oberholzers assert it "falls outside the analytical framework for prior restraint under the trial court's injunction." *Id*. at 25. The Oberholzers insist the ultimate unrelated holding in *Willing* simply hinged on the longstanding principle that equity will not enjoin a defamation, and "[p]rivate property interests and targeting speech invading private residential property were not at issue[.]" *Id*. In short, the Oberholzers see nothing "strikingly similar" between *Willing* and this case. *Id*. Likewise, they deem unpersuasive the federal cases relied upon by the Galapos, because those cases "did not involve the Constitutional rights of a homeowner in the peace and tranquility of his/her private property and home." *Id*. at 28.

Regarding the second issue presented, the Oberholzers call it an "unnecessary replay of the decisional law already discussed" under the first issue. *Id*. at 30. They argue that "*Willing* and the federal decisions [cited by the Galapos] did not involve tort claims other than libel and defamation and the lower court here did not adjudicate the injunction on defamation[.]" *Id*. at 30-31. They then fault the Galapos for supposedly citing "no authority" to support their view that "a claim of invasion or intrusion of private property, or any tort, with targeting speech would never pass constitutional scrutiny for restraint simply because speech was involved." *Id*. at 31 (emphasis omitted).

III. Legal Background

Pennsylvania's Constitution, "drafted in the midst of the American Revolution," was "the first overt expression of independence from the British Crown." *Edmunds*, 586 A.2d at 896. Since its adoption on September 28, 1776, a decade and a half before the

25

adoption of the federal Bill of Rights, our

state charter has provided strong protection in this Commonwealth for freedom of expression. Freedom of expression, which broadly includes rights of speech, press, assembly, and petition, was reflected in two provisions of the 1776 Declaration of Rights, as well as in our Frame of Government.[10]

"The Constitutional [C]onvention of 1790 rewrote Pennsylvania's free expression provisions into the lineal ancestors of their current form." Seth F. Kreimer, *Protection of Free Expression: Article I, Sections 7 and 20*, *in* The Pennsylvania Constitution: A Treatise on Rights and Liberties, §10.1, 296 (Ken Gormley, *et al*. eds., 2d ed. 2020). All provisions were consolidated in the Declaration of Rights, which was promulgated as the final article (Article IX) of the 1790 Constitution. Two admonitions bookended Article IX: on the front end, the Article announced "[t]hat the general, great, and essential principles of liberty and free Government may be recognized and unalterably established, WE DECLARE"; and on the back end, it concluded "[t]hat everything in this article is excepted out of the general powers of government, and shall forever remain inviolate." Pa. Const. of 1790, art. IX.[11]

Freedom of press and speech were consolidated in a new section (Section VII) of the 1790 Constitution titled "Of the liberty of the press." It provided:

> **[a.] That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of**

26

> **government: And no law shall ever be made to restrain the right thereof.**
>
> **[b.] The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.**
>
> **[c.] In prosecutions for the publication of papers, investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence: And, in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.**

Pa. Const. Of 1790, art. IX, §VII.[12] The text of subsections (a)-(b) remained unchanged through the Constitutions of 1838, 1874, and 1968, though they are now found in Article I, Section 7, under the title "Freedom of press and speech; libels."[13]

27

Importantly, the first Section of the Declaration of Rights provides that all citizens "have certain inherent and indefeasible rights[.]" Pa. Const. art. I, §1. "Among those inherent rights are those delineated in §7[.]" *Pap's A.M.*, 812 A.2d at 603; *see W. Pa. Socialist Workers 1982 Campaign v. Conn. Gen. Life Ins. Co.*, 515 A.2d 1331, 1335 (Pa. 1986) ("The Pennsylvania Constitution did not create these rights. The Declaration of Rights assumes their existence as inherent in man's nature. It prohibits the government from interfering with them[.]"); *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) ("the rights of freedom of speech, assembly, and petition have been guaranteed since the first Pennsylvania Constitution, not simply as restrictions on the powers of government, as found in the Federal Constitution, but as inherent and

'invaluable' rights of man").

Given this past, it is apparent that Pennsylvania's "Article I, Section 7 is an ancestor and not a stepchild of the First Amendment[.]" *S.B.*, 243 A.3d at 112. Moreover, as we have explained many, many times, the protections it guarantees "are distinct and firmly rooted in Pennsylvania history and experience." *Pap's A.M.*, 812 A.2d at 605; *see id*. at 596 ("Article I, §7 has its own rich, independent history, and [ ] this Court has repeatedly determined that it affords greater protection for speech and conduct than does the First Amendment."); *id*. at 603 ("Freedom of expression has a robust constitutional history and place in Pennsylvania."); *DePaul*, 969 A.2d at 546 ("history of Article I, Section 7 . . . is deep and the protections afforded freedom of expression by that provision longstanding"); *Tate*, 432 A.2d at 1390 (discussing "this Commonwealth's great heritage of freedom and

28

the compelling language of the Pennsylvania Constitution"). We pause briefly to review some of that history.

Especially noteworthy is the fact Pennsylvania "was the home both of its founder, William Penn, and of Andrew Hamilton." *Pap's A.M.*, 812 A.2d at 604. Both greatly influenced our state charter. Starting with Penn, he was famously "prosecuted in England for the 'crime' of preaching to an unlawful assembly and persecuted by the court for daring to proclaim his right to a trial by an uncoerced jury." *Tate*, 432 A.2d at 1388. We recounted the details of that shocking trial in *Commonwealth v. Contakos*, 453 A.2d 578 (Pa. 1982):

> **In 1670 William Penn and William Mead were tried before a jury at the Old Bailey in London on an indictment of unlawful assembly, disturbing the peace, and "causing a great concourse and tumult." Penn, *The Tryal of William Penn and William Mead for Causing a Tumult* (1719, 1919 Boston) 2. Penn had addressed a group of three hundred Quakers in Grace Church Street, London, after the Quakers had found their meeting house locked by order of the crown. At the trial which followed, the jury found that Penn spoke in the street, but refused to find him guilty of any criminal offense. The judges directed the jury to find the defendants guilty as charged, but the jury refused, whereupon the court directed that they be confined without food or amenities until they complied.**
>
> **The jury, however, refused to comply, and the trial was abruptly ended after the jury had been confined to the jury chamber for two days. The court's displeasure with the verdict was reflected in its fining of the jurors forty Marks each and imprisoning them until the fines were paid. Although Penn was found not guilty, he too was imprisoned for fines based on contempt of court. The jurors were released, however, after Chief Justice Sir John Vaughan of the Court of Common Pleas issued a writ of habeas corpus. The Chief Justice held that judges may not compel a verdict in a criminal case against the convictions of the jury. *See* "The Trial of William Penn," 6 *Litigation* (Winter 1980), 35, 49.**

***Id*. at 580-81. "This trial is likely to have left an impression on Penn[,]" especially in fashioning his Frame of Government, which "was a contract between the proprietor,**

Penn, and the citizens of his colony, expressing his political philosophy and proposed laws for the governance of the colony." *Id*. at 581-82.

29

As for Andrew Hamilton, his "defense of John Peter Zenger played no less direct a role in both the federal and Pennsylvania protection of the freedom of the press and, hence, expression." *Pap's A.M.*, 812 A.2d at 605. Justice Bell discussed Zenger's trial in *In re Mack*, 126 A.2d 679 (Pa. 1956):

> **Freedom of the press - the right to freely publish and fearlessly criticize - was a plant of slow growth. It did not spring full-grown as Minerva did from the brow of Jupiter, nor rise as quickly as did the warriors when Cadmus sowed the dragon's teeth. It was planted by many hardy, freedom-loving souls and nurtured by public opinion for several centuries before it grew to be a tree of gigantic stature. Government both in England and the United States constantly tried to suppress or destroy it. Freedom of the press became a recognized inherent Right only after and as a result of the famous Zenger libel case in New York City in 1735. In that case Zenger's lawyer, Andrew Hamilton of Philadelphia, argued vigorously for the right of a newspaper to criticize freely and truthfully the acts and conduct of governmental officials. The Court refused to recognize the theory of freedom of the press, or permit Hamilton to prove "Truth" as a defense; nevertheless the jury, ignoring the charge of the Court, acquitted Zenger. Public opinion rallied to the cause which Hamilton pleaded and freedom of the press gradually became recognized as an inalienable Right which was ordained and affirmed in the Constitution of the United States and in the Constitution of Pennsylvania[.]**

***Id*. at 683-84 (Bell, J., concurring and dissenting); *see* Kreimer, §10.2(a), at 298 & n.15 (quoting Hamilton's remark that freedom of expression is a "bulwark against lawless power . . . a right which all freemen claim"; "nature and the laws of our country have given us a right - the liberty - both of exposing and opposing arbitrary power . . . by speaking and writing truth") (citation omitted).**

A final historical anecdote is worth mentioning, as it pertains to the prior restraints issue before us. In *William Goldman Theatres*, we acknowledged that "members of the Constitutional Convention of 1790 were undoubtedly fully cognizant of the vicissitudes and outright suppressions to which printing had theretofore been subjected in this very Colony." 173 A.2d at 61. We supported this proposition by recounting how

> **[i]n 1689 William Bradford, a young printer, who had introduced the art of printing to the middle provinces of America, had printed the Charter of the**

30

> **Province so that the people could see their rights. Apparently anticipating trouble, he had not put his name on the pamphlet. He was summoned none the less before the Governor of the Colony where the following colloquy took place: Governor: "Why, sir, I would know by what power of authority you thus print? Here is the Charter printed!" Bradford: "It was by**

> **Governor Penn's encouragement I came to this Province and by his license I print." Governor: "What, sir, had you license to print the Charter? I desire to know from you, whether you did print the Charter or not, and who set you to work?"**

***Id*. at 61 n.1 (citation omitted). "In 1692 Bradford was arrested for seditious libel; although the jury could not agree on his conviction Bradford was held over until next term and his tools and letters were released only when Penn was deprived of the colony in 1693." Kreimer, §10.2(b), at 302 & n.28 (internal quotations and citation omitted).**

Against this deep historical backdrop, this Court has forged a "comprehensive" and "independent constitutional path" under Article I, Section 7. *Pap's A.M.*, 812 A.2d at 606; *see id*. at 607 (in various contexts, "this Court has not hesitated to render its independent judgment as a matter of distinct and enforceable Pennsylvania constitutional law"). In fact, "[o]ur interpretations of the scope of the fundamental rights addressed in Article I, §7 have continued from passage of the Civil War Amendments to the federal Constitution and up to the present day." *Id*.; *see* Kreimer, §10.5(b)(7), 339-40 (detailing this Court's precedents interpreting Article I, Section 7 and explaining that, although our free speech jurisprudence "in the mid-twentieth century in large measure tracked federal doctrine[,]" "[a]s the McCarthy era receded," we "began to approach free expression cases with a somewhat greater degree of independence").

Perhaps unsurprisingly given this Commonwealth's long and storied history, in many cases we held Article I, Section 7 provides broader protections of expression than the First Amendment guarantee. *See id*. at 611-12 (nude dancing is protected expression under Article I, Section 7, even though it is afforded less protection by First Amendment); *Commonwealth, Bureau of Prof'l & Occupational Affairs v. State Bd. of Physical Therapy*,

728 A.2d 340, 343-44 (Pa. 1999) (commercial speech in form of advertising by chiropractors entitled to greater protection so long as not misleading); *Ins. Adjustment Bureau v. Ins. Comm'r*, 542 A.2d 1317, 1324 (Pa. 1988) (Article I, Section 7 does not allow restriction of commercial speech by government agency where legitimate, important interests of government may be accomplished in less intrusive manner); *Tate*, 432 A.2d at 1391 (political leafletting on college campus deemed protected expression under Article I, Section 7 where First Amendment may not protect same); *William Goldman Theatres*, 173 A.2d at 64 (statute providing for censorship of movies, while not necessarily violative of First Amendment, violates Article I, Section 7).

Of course, even the enhanced protections of Article I, Section 7 do not extend to every conceivable type or instance of expression. We have so held in a number of cases. *See, e.g.*, *Working Families Party v. Commonwealth*, 209 A.3d 279, 285-86 (Pa. 2019) (in context of assessing constitutionality of "anti-fusion" (also known as "cross-nominations") provision in Pennsylvania's Election Code, finding no reason to depart from First Amendment law); *Commonwealth v. Davidson*, 938 A.2d 198, 215 (Pa. 2007) ("no Pennsylvania case has purported to afford broader protection to child pornography under Article I, Section 7"); *Norton v. Glenn*, 860 A.2d 48, 58 (Pa. 2004) ("with regard to the neutral reportage doctrine, the Pennsylvania Constitution's protection of free expression is no broader than its counterpart in the federal Constitution"); *Phila. Fraternal Order of Correctional Officers v. Rendell*, 736 A.2d 573, 577 (Pa. 1999) ("freedom of speech does not include the right to force

another to listen, and we can glean no similar compulsion based upon the Constitution of Pennsylvania"); *W. Pa. Socialist Workers 1982 Campaign*, 515 A.2d at 1333 (Article I, Section 7 "does not guarantee access to private property" - in that case, a privately-owned shopping mall at which individuals sought to collect signatures for a gubernatorial candidate's nominating petition - "for the exercise of such

32

rights where . . . the owner uniformly and effectively prohibits all political activities"); *Ullom v. Boehm*, 142 A.2d 19, 21 (Pa. 1958) (statute prohibiting advertising of ophthalmic products was a valid exercise of police power that did not violate Article I, Section 7); *Mack*, 126 A.2d at 681 (Pa. 1956) (upholding judicial rule prohibiting the taking of pictures in courthouse; "freedom of the press . . . is subject to reasonable rules seeking maintenance of the court's dignity and the orderly administration of justice"); *Fitzgerald v. City of Phila.*, 102 A.2d 887, 891 (Pa. 1954) (loyalty oath not unconstitutional under Article I, Section 7; rights asserted "do not extend to freedom to meet with others, knowingly and deliberately, for the discussion of plans to overthrow the government by force or violence"); *Commonwealth v. Widovich*, 145 A. 295, 298 (Pa. 1929) ("The Legislature, under the police power, . . . may prohibit the teaching or advocacy of a revolution or force as a means of redressing supposed injuries, or effecting a change in government."); *City of Duquesne v. Fincke*, 112 A. 130, 132 (Pa. 1920) (upholding conviction for violating city ordinance that forbade the holding of public meetings on city streets without a permit; "the streets are . . . intended for passage and not for assemblage"); *Duffy v. Cooke*, 86 A. 1076, 1081-82 (Pa. 1913) (statute prohibiting employees of cities of the first class from participating in political activities did not violate Article I, Section 7).

Having examined those parts of our state charter that combine to form the broad, overarching right to freedom of expression, we now turn more specifically to the right to free speech.

A. *Freedom of Speech*

The Pennsylvania Constitution of 1776 was "the first Constitution [in the country] to protect 'freedom of speech and of writing.'" Kreimer, §10.1, at 293 n.3 (citation

33

omitted).[14] The Constitutional Convention of 1790 rewrote the provision to state: "The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty." Pa. Const. Of 1790, art. IX, §VII. And, as we have already said, Pennsylvania "retained this declaration unchanged through three constitutional revisions over the last two hundred [and thirty-five] years." Kreimer, §10.4, at 304; *accord* Pa. Const. art. I, §7.

Without question, the "freedom of thought and speech . . . is the matrix, the indispensable condition, of nearly every other form of freedom." *Duggan v. 807 Liberty Ave., Inc.*, 288 A.2d 750, 754 (Pa. 1972) (internal quotations and citation omitted); *see Tate*, 432 A.2d at 1388 ("protection given speech . . . was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people") (internal quotations and citation omitted). This Court scrutinized the language guaranteeing these paramount rights under Article I, Section 7 in *Pap's A.M.*:

> **As a purely textual matter, Article I, §7 is broader than the First Amendment in that it**

> guarantees not only freedom of speech . . ., but specifically affirms the "invaluable right" to the free communication of thoughts and opinions, and the right of "every citizen" to "speak freely" on "any subject" so long as that liberty is not abused. "Communication" obviously is broader than "speech." Nevertheless, we do not overstate this distinction, since the U.S. Supreme Court has long construed the First Amendment as encompassing more than what constitutes purely speech[.]

812 A.2d at 603. Along similar lines, we recognized long ago that the right guaranteed by this provision, "to 'freely speak, write, or print,' is as broad as language can make it,

34

with the single limitation that [the speaker] shall be responsible for the abuse of that privilege." ***Briggs v. Garrett***, 2 A. 513, 518 (Pa. 1886).[15]

Speech can come in many forms - for example, pictures, drawings, paintings, films, engravings, oral utterances, the printed word, and messages conveyed over the internet can all constitute speech. No matter the form, speech is generally protected by Article I, Section 7. ***See, e.g., William Goldman Theatres***, 173 A.2d at 61 ("motion pictures for public exhibition are entitled to the constitutional guarantee of free speech"). Importantly, though, "[f]reedom of speech is not absolute or unlimited[.]" ***Wortex Mills v. Textile Workers Union of Am.***, 85 A.2d 851, 854 (Pa. 1952); ***see Bogash v. Elkins***, 176 A.2d 677, 678 (Pa. 1962) ("Freedom of speech is one of the most prized rights of every American but it is not absolute."). We have held, for example, that "a man may not slander or libel another; . . . he may not engage in loud speaking through sound trucks during certain hours or in certain parts of a city; and he may not assemble with others to commit a breach of the peace or to incite to riot or to advocate the commission of crimes." ***Wortex Mills***, 85 A.2d at 854. As well, although "[p]icketing is a form of assembly and of speech and consequently comes" within Article I, Section 7, "that does not mean that . . . every kind of speech and every kind of picketing is lawful." ***Id.***; ***see Westinghouse Elec., Corp. v. United Elec., Radio & Mach. Workers of Am. (CIO) Local 601***, 46 A.2d 16, 21 (Pa. 1946)

35

(picketing "is a right constitutionally guaranteed as one of free speech[,]" but only "when free from coercion, intimidation and violence") (footnote omitted).

B. *Prior Restraints*

The second half of the free speech provision of Article I, Section 7 provides that any citizen who engages in speech is "responsible for the abuse of that liberty." Pa. Const. art. I, §7. Not long after the 1790 Constitution was adopted, this Court interpreted this provision as creating a straightforward rule: "Publish as you please in the first instance without control; but you are answerable both to the community and the individual, if you proceed to unwarrantable lengths." ***Respublica v. Dennie***, 4 Yeates 267, 269 (Pa. 1805); ***see Commonwealth v. Duane*** (Pa. 1806) (Tilghman, C.J.), ***reported at*** 1 Binn. 97, 1804 WL 969, at *1 n.a ("It is generally understood . . . that this provision was intended to prevent men's writings from being subject to the previous examination and control of an officer appointed by the government, as is the practice in many parts of Europe, and was once the practice in England"); ***see also Respublica v. Oswald***, 1 U.S. 319, 325 (Pa. 1788) (M'Kean, C.J.) (equating the "restraint" prohibited by the

1776 Pennsylvania Constitution with those licensing schemes that were overturned in the British struggle for freedom of the press during the seventeenth century; "The true liberty of the press is amply secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society to enquire into the motives of such publications, and to distinguish between those which are meant for use and reformation, and with an eye solely to the public good, and those which are intended merely to delude and defame."); Kreimer, §10.5(a), at 310 (noting the "responsibility for abuse" language "contemplated by Article I, Section 7 clearly encompasses criminal as well as civil liability").

More than a century and a half later, we decided *William Goldman Theatres*. There, we held "it is clear enough that what [the provision] was designed to do was to

36

prohibit the imposition of prior restraints upon the communication of thoughts and opinions, leaving the utterer liable only for an abuse of the privilege." 173 A.2d at 62. We explained that "[h]istory supports this view." *Id*.

> **After the demise in 1694 of the last of the infamous English Licensing Acts, freedom of the press, at least freedom from administrative censorship, began in England, and later in the Colonies, to assume the status of a "common law or natural right." Blackstone so recognized (circa 1767) when he wrote, "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman had an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object [of] legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating or making public of band [sic] sentiments, destructive of the ends of society, is the crime which society corrects."**
>
> **What Blackstone thus recognized as the law of England concerning freedom of the press came to be, 133 years later, an established constitutional right in Pennsylvania as to both speech and press; Article IX, Section 7, of the Constitution of 1790 so ordained; and, as already pointed**

> out, the provision still endures as Article I, Section 7, of our present Constitution.

Id. (internal citations omitted).[16]

37

Recognizing Article I, Section 7's hostility towards prior restraints, we struck down the law at issue in *William Goldman Theatres* as facially unconstitutional. We explained it was "designed to effect . . . a pre-censorship of the exercise of the individual's right freely to communicate thoughts and opinions" by "plac[ing] in the hands of three persons, selected by the Governor, the power, throughout the State, to judge and condemn motion picture films, reels, and views as obscene." *Id*. at 64. In that way, the law "empower[ed] the censors to trespass too far upon the area of constitutionally protected freedom of expression." *Id*. at 66; *see Tate*, 432 A.2d at 1388 (freedom of speech must be "protected against censorship" since "the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups") (internal quotations and citation omitted).

Next came *Willing*. In that case, which we have already touched upon above, the *en banc* Superior Court majority discussed "the traditional view that equity does not have the power to enjoin the publication of defamatory matter." *Mazzocone v. Willing*, 369 A.2d 829, 831 (Pa. Super. 1976), *rev'd*, 393 A.2d 1155 (Pa. 1978). It explained four reasons why equity traditionally declined to enjoin defamation: "(1) equity will afford protection only to property rights; (2) an injunction would deprive the defendant of his right to a jury trial on the issue of the truth of the publication; (3) the plaintiff has an adequate remedy at law; and (4) an injunction would be unconstitutional as a prior restraint on freedom of expression." *Id*. Yet, the Superior Court majority determined "blind application" of the rule under the facts of that case, where Willing was insolvent and presumably could not pay monetary damages for defamatory speech, "would be antithetical to equity's historic function of maintaining flexibility and accomplishing total justice whenever possible." *Id*. Thus, the majority largely upheld the injunction prohibiting Willing from wearing her sandwich-board sign that was critical of her former attorneys.

38

Judge Jacobs, joined by Judges Hoffman and Spaeth, dissented. He argued the traditional rule that equity will not enjoin defamation "has been specifically followed in Pennsylvania[.]" *Id*. at 836 (Jacobs, J., dissenting), *citing Balt. Life Ins. Co. v. Gleisner*, 51 A. 1024 (Pa. 1902). As such, he believed "any attempted censorship by the court through the writ of injunction is no less objectionable than is the exercise of that function by other departments of the government; such censorship is in effect prohibited by constitutional guaranties of freedom of speech and of the press, and by the constitutional right of trial by jury." *Id*.

Of course, as we earlier noted, we reversed on appeal. We began by declaring the "case raises serious and far reaching questions regarding the exercise of the constitutional right to freely express oneself." *Willing*, 393 A.2d at 1157. Then, we quickly resolved that "the orders issued by the Superior Court and by the trial court" were "clearly prohibited by Article I, Section 7 . . . and by [*William*] *Goldman Theatres*[.]" *Id*. (emphasis added). Reaching this conclusion exclusively under our state charter "obviate[d] the need for any discussion [ ] of federal law" and "render[ed] unnecessary any discussion of the Superior Court's proposed exception to the so-called traditional view that equity lacks the power to enjoin the publication of defamatory matter." *Id*. at 1158. In other words, *Willing* recognized for the first time that, regardless of the common law maxim

that equity will not enjoin a defamation, Article I, Section 7 independently bars the enjoinment of defamatory speech in this Commonwealth. *See* ACLU's Brief at 11 ("There can be no doubt that the members of Pennsylvania's Constitutional Conventions of 1790 and 1838 were aware of the maxim that equity will not enjoin a libel and sought to incorporate it into our fundamental charter."). Nevertheless, in addressing the Superior Court's common law theory, the *Willing* Court also remarked that, in this Commonwealth, "the insolvency of a defendant does not create a situation where there is no adequate

39

remedy at law." *Id*.; *see id*. ("In deciding whether a remedy is adequate, it is the remedy itself, and not its possible lack of success that is the determining factor."). Since *Willing*, this Court "has not upheld an injunction prohibiting an exercise of free expression in the face of a prior restraint challenge under Article I, Section 7." Kreimer, §10.5(a)(1), at 315.[17]

So far as prior restraints are concerned, we make three additional points. First, the Pennsylvania Constitution "has codified the proscription of prior restraints on speech, whereas the federal Constitution prohibits prior restraints in most situations based upon the common law." *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 193 (Pa. 2003). Second, it should not be forgotten that prior restraints, though often associated with restrictions upon the press, do not arise only in that context. *See, e.g.*, *William Goldman Theatres*, 173 A.2d at 64 (Motion Picture Control Act constituted a prior restraint). Thus, while it is true that in *Phila. Newspapers, Inc.*, this Court stated a "prior restraint prevents publication of information or material in the possession of the press[,]" 387 A.2d at 432, that passage is best understood as articulating one type of prior restraint, not all types. Third, "permanent injunctions - *i.e.*, court orders that actually forbid speech activities - are classic examples of prior restraints." *Alexander v. United States*, 509 U.S. 544, 550 (1993); *see* Kreimer, §10.5(a)(1), at 311 ("injunctions share with licensing schemes an orientation towards preventing rather than punishing allegedly illegal communications" since they "turn on the determination of a single official" and "can be granted with the

40

stroke of a pen"); *id*. ("Injunctions interfere with the dissemination of information on the basis of potentially exaggerated threats of possible future harm, rather than on the basis of the results of abuse proven before a jury."); Erwin Chemerinsky, *Injunctions in Defamation Cases*, 57 Syracuse L. Rev. 157, 165 (2007) ("Injunctions are treated as prior restraints because that is exactly what they are: a prohibition on future expression.").

IV. Analysis

Mindful of this extensive legal and historical context, we now address the case before us. Initially, we must decide whether the conduct at issue qualifies as speech, expressive conduct, or a mix of the two. This is because, even where prior restraints potentially are in play, the nature of the communication can alter the analysis. *See, e.g.*, *Ins. Adjustment Bureau*, 542 A.2d at 1324 (in context of commercial speech, "Article I, Section 7, will not allow [a] prior restraint . . . where the legitimate, important interests of government may be accomplished practicably in another, less intrusive manner"). What's more, the parties strongly dispute the true nature of the Galapos' actions in posting the signs, and the courts below reached varying conclusions on this issue. Notably, the judge who entertained the request for a preliminary injunction concluded the signposting "was, on some levels, pure speech[.]" Trial Court Op., 4/28/17, at 8.

Meanwhile, a different judge who later heard the request for permanent injunctive relief held the Galapos' actions "cannot be considered pure speech" because it was effectively "a personal protest[.]" Trial Court Op., 9/12/19, at 9-10. That judge also found the present circumstances to be "analogous to [ ] targeted picketing[.]" *Id*. at 10. Similarly, the Superior Court determined the Galapos engaged in "targeted speech," a category which it described as "including picketing and protesting." *Oberholzer*, 274 A.3d at 766.

Upon careful review, we conclude the Galapos' signposting constituted an act of pure speech; it does not fit the bill of "picketing." *See Kirmse v. Adler*, 166 A. 566, 570 (Pa. 1933)

41

("The court below construed certain acts to be an unlawful picketing and enjoined them, . . . but the facts on this record will not sustain his decree."). Although "picketing is a mode of communication it is inseparably something more and different." *Wortex Mills*, 85 A.2d at 855 (internal quotations and citation omitted); *see Locust Club v. Hotel & Club Emp. Union*, 155 A.2d 27, 34 (Pa. 1959) ("picketing . . . involves more than mere speech"). Notably, picketing is a form of speech and assembly, as it typically "involves patrol of a particular locality[,]" an act which "may induce action of one kind or another" by those being picketed. *Wortex Mills*, 85 A.2d at 855 (internal quotations and citation omitted).

The trial court here found no facts which would support its determination that the Galapos engaged in picketing. Significantly, the Galapos never physically accompanied their signs; they simply placed them in their yard for the world to see and left it at that. "Completely absent" here "are those non-speech elements of picketing which have, in prior cases, been the basis and justification for state interference." *1621, Inc. v. Wilson*, 166 A.2d 271, 275 (Pa. 1960). There was no "patrolling" or human presence of any kind, which has always been the linchpin of picketing. In short, the Galapos' signposting was an act of pure speech that constituted "nothing more than an attempt at persua[s]ion," which is protected by Article I, Section 7. *Id*.; *see Kirmse*, 166 A. at 569 ("Do the methods used involve intimidation or coercion in any form? If they do not, but are peaceful and orderly, equity will not interfere."); *cf. Barker v. Commonwealth*, 19 Pa. 412, 412 (Pa. 1852) (rejecting free speech claim and affirming judgment in a nuisance prosecution against a defendant who "by means of violent, loud, and indecent language" "caus[ed] to assemble and remain [in the public highway] for a long space of time, great numbers of

42

men and boys, so that the streets were obstructed and the public were interrupted in the enjoyment of their rights of passing and repassing") (internal quotations omitted).[18]

The fact that one purpose of the Galapos' signs was to engage in a "personal protest" against the Oberholzers does not alter this conclusion. Trial Court Op., 9/12/19, at 9. Surely, a protest was part of the motive behind the signs. *See, e.g.*, N.T. Preliminary Injunction Hearing, 10/18/16, at 41 (Dr. Galapo testifying what he wants "to accomplish by the signs is to protest behavior which we perceive as being racist towards myself, my wife, and my family"). But so what? Again, Article I, Section 7 "specifically affirms the 'invaluable right' to the free communication of thoughts and opinions, and the right of 'every citizen' to 'speak freely' on 'any subject' so long as that liberty is not abused." *Pap's A.M.*, 812 A.2d at 603 (emphasis added). Those sweeping terms necessarily include the right to use speech as a means of (peaceful) protest. *See, e.g., 1621, Inc.*, 166 A.2d at 275

("appeal not to patronize [a] liquor establishment" that neighborhood groups considered an undesirable nuisance was "nothing more than an attempt at persua[s]ion" and thus was protected activity since freedom of speech includes "the right to publicly communicate one's ideas to others and to air grievances"); *Warren v. Motion Picture Mach. Operators New Castle*, 118 A.2d 168, 171 (Pa. 1955) ("In a democracy, so long as the communication . . . in any [ ] type of quarrel . . . advocates persuasion and not coercion, thus appealing to reason and not to force, there attends the messagebearer the invisible sentinel of the law protecting the right of freedom of communication."); *Watch Tower Bible & Tract Soc'y v. Dougherty,*

43

11 A.2d 147, 148 (Pa. 1940) (*per curiam*) (affirming dismissal of cause of action filed against Roman Catholic Church and one of its priests where the priest threatened to boycott a department store whose radio station broadcast anti-Catholic programming; defendants "cannot be mulcted in damages for protesting against the utterances of one who they believe attacks their church and misrepresents its teachings").

In any event, the Galapos' ultimate aim was far broader than just protesting. *See* N.T. Preliminary Injunction Hearing, 10/18/16, at 54 (Dr. Galapo stating he "want[s] people to understand what happens with racism"); *id*. at 44 (detailing how racism "affects the neighbors as well" and thus the messages portrayed on the signs "can be taken both on a community level, on an individual level, as well as on a worldwide level"). Article I, Section 7, like the First Amendment, protects speech that serves multiple ends. *See Snyder*, 562 U.S. at 454 ("even if a few of the signs - such as 'You're Going to Hell' and 'God Hates You' - were viewed as containing messages related to [a particular person], that would not change the fact that the overall thrust and dominant theme of [the] demonstration spoke to broader public issues"); *see also Cohen v. California*, 403 U.S. 15, 26 (1971) ("much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well").[19]

What matters is whether the "speech is of public or private concern, as determined by all the circumstances of the case." *Id*. at 451. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or

44

other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Id*. at 453 (internal quotations and citations omitted). Further, the "arguably inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." *Id*. (internal quotations and citation omitted).

Here, it cannot seriously be disputed that the messages relayed by the Galapos' signs are matters of public concern. Mrs. Oberholzer admitted to making an offensive, anti-Semitic remark to Dr. Galapo, which some might argue is "part of a broader, societal trend of hate and violence toward Jewish people." *Tannous v. Cabrini Univ.*, 697 F.Supp.3d. 350, 367 (E.D. Pa. 2023). In response, the Galapos erected on their own lawn stationary signs decrying hatred, anti-Semitism, and racism. We have no hesitation in finding "[t]hese are concerns of general interest to the Jewish community and the wider public[.]" *Id*., *citing Fenico v. City of Phila*., 70 F.4th 151, 165 (3d Cir. 2023) ("[S]peech touching on race relations is inherently of public

concern.") (internal quotations and citation omitted), *Locurto v. Giuliani*, 447 F.3d 159, 183 (2d Cir. 2006) ("[C]ommentary on race is, beyond peradventure, within the core protections of the First Amendment."), and *Rybas v. Wapner*, 457 A.2d 108, 110 (Pa. Super. 1983) ("Individuals should be able to express their views about the prejudices of others without the chilling effect of a possible lawsuit in defamation resulting from their words."); *see Clark v. Allen*, 204 A.2d 42, 46 (Pa. 1964) ("no question or issue has divided the American people" more than "the highly emotional question of racism"); *id*. at 47 ("It is absolutely essential for the existence and preservation of our Country that opinions on such vitally important and highly controversial issues should be vigorously argued and debated[.]").

45

Having resolved that the Galapos engaged in speech, we shift our focus to whether the trial court possessed the power to enjoin it. We conclude it did not. Article I, Section 7, as interpreted in *William Goldman Theatres* and *Willing*, dictates this result.

The Superior Court took the position that a prior restraint is implicated only by "an order forbidding future communications[,]" whereas the injunction entered by the trial court here addressed "existing signs, *i.e.*, preexisting, and not future, communications[.]" *Oberholzer*, 274 A.3d at 750 (emphasis in original). But we rejected similar arguments in *William Goldman Theatres* and *Willing.* Beginning with *William Goldman Theatres*, we found the statutory provisions at issue in that case effected an improper prior restraint on speech not only because they "restrain[ed] the initial showing of a film for 48 hours after notice to the Board of its intended exhibition[,]" but also because "subsequent showings [were] likewise subjected to previous restraint[.]" 173 A.2d at 64 (emphasis added). Similarly, the injunction in *Willing* was aimed at "permanently enjoin[ing Willing] from further demonstrating against and/or picketing" her former attorneys. 393 A.2d at 1157 (emphasis added). In both cases, then, the speech was ongoing, yet we nevertheless deemed the injunctions to be improper prior restraints. Perhaps most telling of all, in *William Goldman Theatres*, Justice Eagen specifically argued in dissent that "[t]here is a marked difference between 'prior restraints' and 'post restraints,'" but the Court was unpersuaded under the facts of that case. 173 A.2d at 69.[20]

46

We are left with two issues: (1) whether the publication of language which gives rise to tort claims other than defamation cannot be enjoined under Article I, Section 7, and (2) whether the Oberholzers have identified any countervailing constitutional rights that might alter our approach.

The first issue is easily resolved, because the text of Article I, Section 7 does not distinguish between defamation or any other tort involving speech. *See, e.g.*, *League of Women Voters v. Commonwealth*, 178 A.3d 737, 802 (Pa. 2018) ("The touchstone of

47

interpretation of a constitutional provision is the actual language of the Constitution itself."). In fact, the provision does not even mention defamation. But this makes sense, because the provision is not concerned with tort law; its purpose is to jealously protect "the free communication of thoughts and opinions," speech included. Pa. Const. art. I, §7; *see Phila. Newspapers, Inc.*, 387 A.2d at 433 n.16 ("direct restraints upon expression impose restrictions on human thought and strike at the core of liberty"). That protection does not turn on the label attached to a cause of action. If it did,

litigants could avoid the prior restraints provision by simply dressing up a defamation claim as something else. We do not believe Article I, Section 7's abhorrence of prior restraints can be so easily avoided. Instead, we hold that what matters for purposes of a prior restraints analysis under Article I, Section 7 is whether it is speech that is sought to be enjoined. If so, the court generally lacks the power to grant injunctive relief, regardless of the nature of the underlying cause of action. *See Kraemer Hosiery Co. v. American Fed'n of Full Fashioned Hosiery Workers*, 157 A. 588, 603 (Pa. 1931) (Maxey, J., dissenting) ("[I]deas are not subject to injunction. Ideas have far-reaching effects. Some of these effects may be good and some may be evil, but it is opposed to progress and contrary to the spirit of our institutions to entrust any official with the arbitrary power to say what ideas shall be liberated and what ideas shall be suppressed.").[21]

48

The final issue we must tackle is the Oberholzers' argument that an injunction was warranted given that this case uniquely involves "[p]rivate property interests and targeting speech invading private residential property[.]" Oberholzers' Brief at 25; *see id*. at 31 n.3 (arguing "common law nuisance constitutes the legal grounds for injunctive relief").

Preliminarily, we stress that "[p]roperty has no rights, no privacy. Persons do." *Commonwealth ex rel. Cabey v. Rundle*, 248 A.2d 197, 199 (Pa. 1968). That said, we have also recognized that "[u]pon closing the door of one's home to the outside world, a person may legitimately expect the highest degree of privacy known to our society." *Commonwealth v. Flewellen*, 380 A.2d 1217, 1220 (Pa. 1977); *see Bedminster Twp. v. Vargo Dragway, Inc.*, 253 A.2d 659, 661 (Pa. 1969) ("Although not entitled to absolute quiet in the enjoyment of property, every person has the right to require a degree of quietude which is consistent with the standard of comfort prevailing in the locality wherein he lives."); *see also Carey v. Brown*, 447 U.S. 455, 471 (1980) ("The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.").

"One important aspect of residential privacy is protection of the unwilling listener." *Frisby*, 487 U.S. at 484. Ordinarily, "we expect individuals simply to avoid speech they do not want to hear[.]" *Id.*; *see Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210-11 (1975) ("the burden normally falls upon the viewer to avoid further bombardment of [his] sensibilities simply by averting [his] eyes") (internal quotation and citation omitted). But this does not require individuals to "welcome unwanted speech into their own homes[.]" *Frisby*, 487 U.S. at 485 (emphasis added); *see F.C.C.*, 438 U.S. 726 (offensive radio broadcasts); *Rowan v. U.S. Post Office Dept.*, 397 U.S. 728 (1970) (offensive mailings);

49

Kovacs v. Cooper, 336 U.S. 77, 86-87 (1949) (sound trucks). Simply put, there "is no right to force speech into the home of an unwilling listener." Frisby, 487 U.S. at 485.

At the same time, however, the "mere fact that speech takes place in a residential neighborhood does not automatically implicate a residential privacy interest." Id. at 492 (Brennan, J., dissenting). "It is the intrusion of speech into the home or the unduly coercive nature of a particular manner of speech around the home that is subject to more exacting regulation." Id. at 492-93. "[S]o long as the speech remains outside the home and does not unduly coerce the occupant, the government's heightened interest in protecting residential privacy is not implicated." Id. at 493.

Taking all these principles into account, we hold that although trial courts generally lack the power to enjoin speech under Article I, Section 7, because freedom of speech is not absolute and residents "may legitimately expect the highest degree of privacy known to our society" when inside their homes, Flewellen, 380 A.2d at 1220, and enjoy the "right to require a degree of quietude which is consistent with the standard of comfort prevailing in the locality wherein [they] live[,]" Bedminster Twp., 253 A.2d at 661, courts may enjoin pure speech occurring in the residential context "upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner." Cohen, 403 U.S. at 21.[22]

50

Here, though, we are unconvinced that the Galapos' signs intolerably intrude upon any substantial privacy interests held by the Oberholzers. The Galapos' signs are stationed exclusively on their own property and they lack any coercive or other element that might implicate the Oberholzers' privacy interests. See N.T. Deposition of Denise Oberholzer, 3/13/18, at 42-43 (admitting none of the signs mentioned the Oberholzers by name, encroached their property, or were threatening); N.T. Deposition of Frederick Oberholzer, 3/13/18, at 29-30 (same). Nor do the signs present any type of actionable, non-speech-based nuisance, like excessive illumination or loud noises. See Kohr v. Weber, 166 A.2d 871, 872 (Pa. 1960) ("loud noises, glaring illumination, and swirling dust

51

clouds which" accompanied facility for drag-racing properly enjoined). The signs are just that: signs. All homeowners at one point or another are forced to gaze upon signs they may not like on their neighbors' property - be it ones that champion a political candidate, advocate for a cause, or simply express support or disagreement with some issue. If a single judge could suppress such speech any time an offended viewer invoked a generalized right to residential privacy, without proving more - specifically, that substantial privacy interests are being invaded in an essentially intolerable manner - it would mark the end to residential expression; after all, we cannot ignore that the Galapos have property rights too.[23]

On this latter point, City of Ladue v. Gilleo, 512 U.S. 43 (1994), is particularly compelling. The High Court in that case discussed how a "special respect for individual liberty in the home has long been part of our culture and our law," a principle with "special resonance when the government seeks to constrain a person's ability to speak there."

52

Id. at 58 (internal citations omitted) (emphasis in original); see id. (government's "need to regulate temperate speech from the home is surely much less pressing"). The Court also addressed signs specifically, which it described as "a venerable means of communication that is both unique and important." Id. at 54. It stated:

> *Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident's support for particular candidates, parties, or causes. They may not afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct*

medium of expression.

. . . .

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker." As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade. A sign advocating "Peace in the Gulf" in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-year-old child's bedroom window or the same message on a bumper sticker of a passing automobile. An espousal of socialism may carry different implications when displayed on the grounds of a stately mansion than when pasted on a factory wall or an ambulatory sandwich board.

Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a handheld sign may make the difference between participating and not participating in some public debate. Furthermore, a person who puts up a sign at her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means.

Id. at 54-57 (footnotes and internal citations omitted) (emphasis in original).

These principles speak directly to the matter at hand. The Galapos made clear they were intending to reach the Oberholzers, plus the rest of the local community, with

53

their message. Broadly speaking, that message was aimed at raising awareness of the consequences of hatred and racism. As the Galapos posted the signs on their own lawn, moreover, they provided information about themselves as the speakers. In the same way a "sign advocating 'Peace in the Gulf' in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-year-old child's bedroom window," id. at 56, so too may a sign advocating anti-hatred views when placed in the yard of a Jewish family and directed towards a family that made anti-Semitic remarks. Indeed, as members of the Jewish community, the Galapos "had a unique, and valuable, perspective" on the matter. Appeal of Chalk, 272 A.2d 457, 461 (Pa. 1971).

At the end of the day, what the Galapos seek to do is persuade on an issue of public importance; that is precisely the kind of speech Article I, Section 7 not only protects, but encourages. See, e.g., Tate, 432 A.2d at 1388 ("A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. It may strike at prejudices and preconceptions and have profound

unsettling effects as it presses for acceptance of an idea.") (internal quotations and citation omitted). And, as we acknowledged at the start, speech is powerful. So we do not doubt the permanent injunction judge's finding that the Galapos' signs "severely and negatively impact the [Oberholzers'] well-being, tranquility, and quiet enjoyment of their home." Trial Court Op., 9/12/19, at 7. That finding, however, is not equivalent to a determination "that substantial privacy interests are being invaded in an essentially intolerable manner[,]" Cohen, 403 U.S. at 21, and the record does not support such a conclusion in any event.[24] Accordingly, because the Galapos seek to engage in protected

54

speech that does not invade substantial privacy interests in an essentially intolerable manner, the burden falls upon the Oberholzers to "avoid further bombardment of their sensibilities simply by averting their eyes." Id.; see also Kirmse, 166 A. at 568 ("This [C]ourt . . . has never impressed the strong arm of an equitable injunction unless the circumstances imperatively required it.").[25]

In reaching this result, we do not take lightly the concerns raised by the dissents and the Oberholzers about the right to quiet enjoyment of one's property, and we recognize some may be uneasy with the notion trial courts generally are powerless to

55

enjoin such speech.[26] But this is not to say the government is powerless to act in this area. On the contrary, speech signs placed in one's yard "are subject to municipalities' police powers." City of Ladue, 512 U.S. at 48; see id. ("It is common ground that governments may regulate the physical characteristics of signs - just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise."); Linmark Assocs., Inc. v. Willingboro Twp., 431 U.S. 85, 93-94 (1977) (ordinances that "promote aesthetic values[,]" such as those regulating "lawn signs of a particular size or shape[,]" are permissible when they are "unrelated to the suppression

56

of free expression") (internal quotations and citation omitted); Andress v. Zoning Bd. of Adjustment of City of Phila., 188 A.2d 709, 712 (Pa. 1963) ("These rights and freedoms are subject to the paramount right of the Government to reasonably regulate and restrict, under a reasonable and non-discriminatory exercise of the police power, the use of property, whenever necessary for the public health, safety, morals and general welfare."). So, for example, a generally applicable, content-neutral ordinance that reasonably limits the total number of signs residents are permitted to have in their yards would likely not raise constitutional concern. See, e.g., City of Ladue, 512 U.S. at 58-59 (although a "ban on almost all residential signs violates the First Amendment[,]" "more temperate measures could in large part satisfy [municipalities'] regulatory needs without harm to the First Amendment rights of its citizens"); Kreimer, §10.5(b)(6), at 328 ("the 'free communication of thoughts and opinions' is not infringed by generally applicable regulations simply because they impose some collateral burden on communication"). Nothing we say today impacts the ability of the government to utilize such powers for the public good.

V. Conclusion

We hold the Galapos engaged in protected speech when they posted in their own yard stationary signs decrying hatred and racism. We further hold the Oberholzers failed to prove that substantial privacy interests are being invaded in an

essentially intolerable manner by the Galapos' pure residential speech. As such, Article I, Section 7 of the Pennsylvania Constitution and this Court's precedents precluded the trial court from enjoining the signs, regardless of the nature of the torts alleged. The injunction imposed an improper prior restraint on speech in violation of Article I, Section 7. We therefore affirm the Superior Court's order only insofar as it vacated the injunction entered by the

57

trial court; we reverse the Superior Court's decision remanding for further proceedings, and instead order the injunction dissolved.[27]

Chief Justice Todd and Justices Donohue and Mundy join the opinion.

58

DISSENTING OPINION

WECHT JUSTICE.

In this appeal, Simon and Toby Galapo present two primary claims. First, they argue that the trial court's injunction is an unconstitutional prior restraint on speech. Second, they assert that the injunction violates "the so-called traditional rule that equity lacks the power to enjoin the publication of defamatory matter."[1] *(The "no-injunction rule" for short.) Because the trial court's injunction in this case was not based on a theory of defamation, the Galapos urge us to adopt an unprecedented version of the no-injunction rule that would prohibit injunctions in all tort cases, not just in defamation actions.*[2] *Today, the Majority seems to resolve both appellate claims in the Galapos' favor. In so doing,*

59

the Majority obscures the important differences between the prior restraint doctrine and the no-injunction rule.[3]

In this dissent, I explore the history of the no-injunction rule and the reasons that modern courts have given for modifying or abandoning it. I then discuss the Majority's adoption of the no-injunction rule, its dramatic expansion of that rule to encompass torts other than defamation, and its separate conclusion that the present injunction is an unconstitutional prior restraint under Article I, Section 7 of the Pennsylvania Constitution.[4] *I conclude ultimately that the injunction here is not a prior restraint and does not violate the no-injunction rule, a rule that in any event does not exist in Pennsylvania, and one that would not apply to this case even if it did exist here. Contrary to the Majority's analysis, equity courts possess the authority to issue certain kinds of narrow injunctions that restrict speech so long as those injunctions can withstand either intermediate scrutiny (for content-neutral injunctions) or strict scrutiny (for content-based injunctions). Because the instant injunction survives application of either standard, it should be upheld.*

I. History of the No-Injunction Rule

The no-injunction rule and Article I, Section 7's prohibition on prior restraints have distinct origins, with the former predating the latter.[5] *The no-injunction rule, at least at its*

60

inception, was not designed to protect free speech. It was a constraint on the jurisdiction of equity courts in England. "Due to the historical division between courts of law and courts of equity, [English] common law judges originally lacked the authority to grant any equitable relief."[6] *Because English common law "courts had no power to grant injunctions, and courts of equity lacked the authority to adjudicate claims for defamation, the only remedy*

available for defamation was money damages at law."[7]

Early American courts invoking the common law no-injunction precept likewise treated the rule as a jurisdictional limitation on courts of equity.[8] Yet many of those same courts "continued to deny requests for injunctions targeting defamatory speech" on this basis even "long after law and equity courts had merged in most jurisdictions in the United States."[9] Broadly speaking, American courts adhering to the no-injunction rule cited one or more of the following three reasons for doing so. First, some courts believed that to allow a court of equity to decide whether speech is defamatory would be to intrude upon

61

the role of the jury.[10] Second, some courts reasoned that defamation plaintiffs already have an adequate remedy at law and therefore are not entitled to equitable relief.[11] Third, some courts suggested that an injunction prohibiting further defamatory speech would be an unconstitutional prior restraint.[12] Each of these distinct rationales for the no-injunction rule warrants closer scrutiny.

First, "[r]espect for the role of juries in free speech controversies played a seminal part in the adoption of the no-injunction rule by American courts."[13] Because courts of law empaneled juries while courts of equity did not, a view emerged that allowing an equity court to enjoin speech that the court itself has determined to be defamatory would deprive defendants of their "right to have the truth or falsity of the issue determined by a

62

jury trial as at common law."[14] In a 1902 case, for example, this Court affirmed a lower court's refusal to exercise equity jurisdiction in a defamation case.[15] We explained that, even in cases where the plaintiff lacks an adequate legal remedy such that the exercise of equity jurisdiction may be warranted, the defamation nevertheless "must be so clear as to be practically conceded, or it must first be established by the verdict of a jury."[16]

If the no-injunction precept is to be understood as a rule intended to protect the defendant's right to a jury trial, a distinction necessarily arises between preliminary and permanent injunctions. Unlike preliminary injunctions, permanent injunctions can be issued after a jury has determined that the specific statements sought to be enjoined are in fact defamatory, or perhaps even after the defendant has waived his right to a jury trial by opting for a bench trial or by entering into a settlement agreement. Assuming that the injunction goes no further than prohibiting the defendant from republishing the exact statement found or agreed to be defamatory, there can be no serious claim that the grant of an equitable remedy deprives the defendant of his right to a jury trial. I stress that the narrowness of any injunction is key here, since an order restricting speech beyond that which was adjudged or agreed to be tortious would, in theory, deny the defendant his

63

right to have a jury determine whether the additional statements are defamatory.[17] But as long as the injunctions are crafted narrowly, they are upheld in most states.[18]

Turning to the notion that defamation plaintiffs are not entitled to an equitable remedy because they possess an adequate legal one, I believe that the Superior Court in Willing I justifiably was skeptical of this premise.[19] Such a rule "would make an

64

impecunious defamer undeterrable"

because he could simply "continue defaming the plaintiff, who after discovering that the defamer was judgment proof would cease suing, as he would have nothing to gain from the suit, even if he won a judgment."[20] This would leave the defamer "free to repeat all their defamatory statements with impunity" and the defamed with "no remedy except to sue for damages and obtain another money judgment that they won't be able to collect."[21] This is not an adequate remedy. It is a purely theoretical one. Scholars rightly have criticized the notion that such an illusory entitlement to damages constitutes an adequate remedy at law.[22]

The adequate-remedy theory was never all that persuasive, and it has become even less so over time. As technology has lowered barriers to mass communication, assumptions that courts made in earlier eras have grown ripe for reexamination. In the 1980s, for example, "70 percent of all libel actions in the United States involved claims against the mass media," while such suits today are more likely to be filed against

65

judgment-proof bloggers, "citizen journalists," or social media users.[23] Furthermore, the lifespan of a defamatory statement today is now "essentially infinite" given that it "can live indefinitely on the Internet, waiting to be pulled up and recycled by a search engine."[24]This stands in stark contrast to the "relatively ephemeral stream of information" that was available when newspapers and television broadcasts dominated the media ecosystem.[25]

As the defendants in libel actions have changed, so too have the plaintiffs. "In past decades, the typical defamation plaintiff was a public official or public figure," but today, "given the ease with which information is published and shared online, many defamation plaintiffs are not so well known."[26] While such plaintiffs are at an advantage in that they need not prove actual malice to establish their defamation claims, "they still face the hard reality that their legal remedies are limited" in states that prohibit equitable remedies in defamation cases.[27] This is so because individual tortfeasors are much more likely than media organizations to be judgment-proof, and online intermediaries like social media

66

websites generally are not vicariously liable for the tortious speech of their users under Section 230 of the Communications Decency Act.[28]

As scholars have pointed out, the idea that an illusory right to monetary damages constitutes an "adequate" remedy has become increasingly tough to maintain as the Internet has made it easier than ever to defame.[29] And while the rule prohibiting courts from enjoining defamatory speech produces unjust outcomes in the Internet era, things could be even worse when the next wave of technology becomes mainstream.[30]

The final justification that courts have given for the rule that equity lacks jurisdiction to enjoin defamation is that a judicial order prohibiting the defendant from defaming the plaintiff would be an unconstitutional prior restraint.[31] A prior restraint is "a law, regulation

67

or judicial order that suppresses speech-or provides for its suppression at the discretion of government officials-on the basis of the speech's content and in advance of its actual expression."[32] While I concede that some permanent injunctions certainly can be prior restraints, the notion that the prior restraint doctrine necessarily acts "as

a constitutional bar to the granting of equitable relief against speech in an appropriate case has been greatly exaggerated."[33] As explained above, an equity court crafting a permanent injunction theoretically could enjoin only the exact statement already adjudged to be defamatory, without sweeping any broader.[34] Under a proper understanding of the prior restraint doctrine, such injunctions do not violate Article I, Section 7 or the First Amendment.[35]

Those who believe that the prior-restraint doctrine justifies the no-injunction rule do not mean literally to say that every conceivable order enjoining defamatory speech would be a prior restraint. The idea instead is that, to avoid creating an unconstitutional prior restraint, an equity court would have to craft an injunction so narrow that it would not

68

really stop a resolute defamer from continuing to harm the plaintiff.[36] To borrow Dean Chemerinsky's pithy summation of the dilemma: "Any effective injunction will be overbroad, and any limited injunction will be ineffective."[37] This is problematic because it is well-established that equity courts should refrain from issuing orders that have no chance of accomplishing their intended result.[a href="#FN65" name="ftn.FN65" id= "ftn.FN65">38] Proponents of the prior-restraint justification for the no-injunction rule also point out that, even if an injunction is limited to the statements already found to be defamatory, that does not necessarily mean that the statements will always be defamatory.[39] Yet even this objection would seem to allow for some injunctions that restrict false statements about past events.[40]

II. The Majority's Adoption and Expansion of the No-Injunction Rule

The notion that our common law imposes some blanket prohibition on equity courts enjoining defamatory speech has fallen out of favor with courts. And for good reason. Although jurists have attempted to justify the rule on many different grounds, none of the reasons given have been persuasive. The adequate-remedy theory has been ridiculed by scholars. The jury-trial objection does not explain why equity courts should be

69

prohibited from entering permanent injunctions after a tort suit has been resolved on the merits. And the prior-restraint justification ignores the fact that a permanent injunction enjoining only the precise statement or statements already adjudged to be defamatory would not constitute a prior restraint.

One good thing about our precedent in this area is that this Court (before today) has never adopted the no-injunction rule. Although the rule "has been a fixture of Anglo-American law for more than three centuries,"[41] we have never applied it. Indeed, as best I can discern, this Court did not even mention the no-injunction rule until 1978, in Willing II. In nonbinding dicta in a nonbinding plurality opinion, the Court mentioned-but did not apply-what it labeled the "so-called traditional view that equity lacks the power to enjoin the publication of defamatory matter."[42] For reasons unknown, this stray reference to the "so-called traditional view" has stumbled forward, with some federal courts concluding incorrectly that the no-injunction rule is the law in Pennsylvania.

In Kramer v. Thompson,[43] for example, the United States Court of Appeals

for the Third Circuit was called upon to predict whether this Court would "be willing to permit an exception to the rule that equity will not enjoin a defamation in cases where there already has been a jury determination that the defendant's statements were libelous."[44] Implicit in that question is a misunderstanding of Pennsylvania law. It makes no sense to ask whether this Court would embrace an exception to a rule that it has never adopted. The

70

Third Circuit's mistake is that it misinterpreted our decision in Willing II as adopting the no-injunction rule.[45] The Kramer Court opined that Willing II was an "unqualified rejection of the Superior Court's" decision in Willing I, which refused to apply the common law no-injunction rule.[46] That was incorrect. The lead opinion in Willing II explicitly did not base its conclusion on the no-injunction rule, although the three concurring justices would have done so.[47] The only principle that garnered the votes of four Justices in Willing II was the conclusion that the injunction in that case was an unconstitutional prior restraint.[48] Willing II established no precedent at all regarding the no-injunction rule.

The Galapos cite the Kramer court's misreading of our decision in Willing II-along with some other courts that have relied upon Kramer[49]-and claim that Willing II "adopted

71

the common law notion that equity will not enjoin defamation."[50] This claim is erroneous. The only Pennsylvania appellate court decision that even engages with the no-injunction rule is the Superior Court's persuasive repudiation of it in Willing I.[51] Our pre-Willing II case law explains that injunctive relief may be available whenever it is "so clear as to be practically conceded" that the speech is defamatory, or when the defamation has been "established by the verdict of a jury."[52] Thus, the only version of the no-injunction rule that could even arguably be consistent with this Court's precedent is the modern, limited approach that allows for certain narrowly crafted permanent injunctions.

Yet the Majority today adopts a no-injunction rule that appears to make no distinction between preliminary and permanent injunctions.[53] That failure is indefensible. A no-injunction rule that categorically prohibits narrow permanent injunctive relief in defamation cases represents the minority approach among the fifty states and is inconsistent with our own precedent.[54] The rule is also unjust insofar as it blocks equity

72

courts from preventing further reputational damage that might never be adequately compensated by money damages.[55]

Sadly, it gets worse. Because the equity court's injunction in this case was not based on the theory that the Galapos' signs were defamatory, it is not enough for the Majority to simply adopt the disfavored theory that equity will not enjoin defamation. The Majority must also accept the Galapos' argument that the no-injunction rule bars injunctive relief that restricts speech in all tort cases, not just in defamation actions.[56] The Majority offers no persuasive justification for this

expansive rule, which, again, is based entirely on the Third Circuit's misinterpretation of Willing II. The Majority does not scrutinize the Galapos' argument to any real extent; it reasons simply that the no-injunction rule should prohibit injunctions in all speech-related tort cases because "the text of Article I, Section 7 does not distinguish between defamation or any other tort involving speech."[57] As explained above, however, the no-injunction rule does not emanate from Article I, Section 7. So, the fact that Article I, Section 7 does not distinguish between different torts proves nothing.

73

In point of fact, the case for enjoining non-defamatory tortious speech or expressive activity is much stronger than the case for enjoining pure defamation.[58] Unlike in defamation cases-where the basis of the tort is the false statement itself-other torts such as intentional infliction of emotional distress, invasion of privacy, and nuisance are more likely to involve a combination of speech and conduct.[59] That likely explains why neither the Majority nor the Galapos are able to identify any state in the entire nation that has a no-injunction rule resembling the one that the Majority creates today.[60]

74

The Majority's embrace of this regrettable rule, at a time in which even the classic version of the rule has been widely questioned,[61] will rob equity courts of their power to award any measure of justice at all to tort victims who lack an adequate legal remedy. The Majority's response to my analysis is all bark and no bite. Seemingly acknowledging that the common law no-injunction rule has never been adopted in Pennsylvania, the Majority pretends instead that an identical prohibition exists as a matter of state constitutional law.[62] There is no support for that notion either. The Majority cites only Willing II, which applied no such rule. In an effort to suggest otherwise, the Majority describes the holding in Willing II in the broadest imaginable terms, insisting that "a four-

75

Justice majority . . . held the enjoinment of speech is 'clearly prohibited by Article I, Section 7[.]'"[63] That's true, of course, but only because those four Justices believed that the injunction was an unconstitutional prior restraint.[64] There was not a four-Justice majority on the issue of whether equity can ever enjoin defamatory speech.[65]

Put simply, the holding in Willing II did not rest on the common law argument that equity courts lack the power to enjoin defamatory speech. And the Court did not adopt a similar prohibition as a matter of state constitutional law either. Moreover, even if the Court had adopted such a prohibition, that still would not support today's expansion of the no-injunction rule to cases involving torts other than defamation. Regardless of whether we claim that today's new rule comes from the common law or-as the Majority implausibly insists-the Constitution, the fact remains: there is no precedent supporting it.[66]

III. The Majority's Prior Restraint Analysis

The Majority separately concludes that

the injunction here is a prior restraint under Article I, Section 7 of the Pennsylvania Constitution. Prior restraints are laws, regulations,

76

or judicial orders that purport to restrict speech before it occurs.[67] Because prior restraints prohibit speech before it has been disseminated, they are presumptively unconstitutional and have been upheld only in extraordinary circumstances not present here.[68] Article I, Section 7 prohibits prior restraints on the right to speak, write, or print freely, but it also explicitly recognizes that citizens may be "responsible for the abuse of that liberty."[69] A proper understanding of prior restraints therefore must distinguish between prior restraints and subsequent punishments. A subsequent punishment is "a penalty imposed after the communication has been made as a punishment for having made it," whereas a prior restraint "would prevent communication from occurring at all."[70] The latter is a prior restraint. The former is not.

The Majority today embraces a conception of prior restraints so broad that it applies to all injunctions that even tangentially restrict free expression, whether before or after the expression occurs. In the Majority's telling, an order preventing a defendant from continuing to repeat a tortious statement is a prior restraint, just as an order preventing a defendant from making the statement for the first time would be.[71] While

77

support for this conception of prior restraints can be found in William Goldman Theatres,[72] it is plainly wrong. At the heart of the prior restraint doctrine is the idea that "a free society prefers to punish the few who abuse rights of speech after they break the law [rather] than to throttle them and all others beforehand."[73] Narrowly tailored permanent injunctions do not throttle speakers before they break the law. Rather, they threaten subsequent punishment for repeat lawbreaking.[74] There is a fundamental difference between preventing someone from publishing something that allegedly would be tortious if published and threatening someone with contempt if they continue to publish something already found to be tortious.

The confusion in our case law no doubt stems from the United States Supreme Court's "occasional dicta suggesting that all injunctions are prior restraints," and these dicta have been recognized as "erroneous overgeneralizations."[75] Injunctions like the one before us that are "carefully focused, address a continuing course of speech, and are

78

imposed after an opportunity for full merits consideration are not properly analyzed as prior restraints."[76]

I do not take issue with the result in either William Goldman Theatres or Willing II. Both of those cases plainly did involve prior restraints on speech. The injunction in Willing II was a preliminary injunction that sought to restrict certain speech before it was either adjudged or agreed to be tortious. Worse, the equity court's injunction in Willing II prohibited the defendant from making any "defamatory statements" about her former attorneys,

meaning that the order plainly did restrict plenty of speech that had not yet occurred.[77] The statute in William Goldman Theatres was also a prior restraint because

79

it imposed a censorship regime on films prior to their initial exhibition.[78] The Court therefore reached the correct result in William Goldman Theatres, even though it relied on an overly broad conception of prior restraints.[79]

IV. Application of Strict Scrutiny

Having concluded that the injunction here is not a prior restraint and does not violate the no-injunction rule-which, in any event, has never been the law in Pennsylvania before today-the question becomes whether the injunction violates Article I, Section 7 of the Pennsylvania Constitution. This analysis proceeds, as it does in other cases involving restrictions on speech, by considering the "fit" between the injunction's legitimate objectives and the restraints it imposes on speech. We apply either strict or intermediate scrutiny, depending upon whether the restriction is content-based or content-neutral.[80] The Galapos argue for application of strict scrutiny, whereas the

80

Oberholzers maintain that the injunction is a content-neutral time, place, and manner restriction to which intermediate scrutiny applies. While Justice Brobson's dissent makes a convincing case for applying intermediate scrutiny, I ultimately conclude that the trial court's injunction would survive application of either test.

Under the strict scrutiny test, a content-based restriction on speech can be justified only if it is narrowly tailored to serve a compelling state interest.[81] There is clearly a compelling state interest in this case. The United States Supreme Court has stated repeatedly that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society."[82] Surely, then, the state must have an exceedingly compelling interest in remedying tortious speech or expressive conduct that intrudes upon the tranquility or privacy of the home.[83] That interest is even higher when the legal remedies available to the tort victim are inadequate. In other words, the equity court in this case had a compelling interest in remedying a nuisance that intruded upon the tranquility of the Oberholzers' home-a nuisance for which the court concluded the Oberholzers had no other adequate remedy at law.

81

As Justice Brobson explains today, and as Judge Stabile explained in the Superior Court, the injunction here also is extremely narrowly tailored to remedy the nuisance without burdening any more of the Galapos' speech than is absolutely necessary.[84] The injunction does not prevent the Galapos from expressing-to the Oberholzers or to anyone else-any of the messages that appear on any of the twenty-three signs. The injunction merely prohibits the Galapos from expressing those views in the exact manner that they had been employing-i.e., the tortious manner, which consisted of a

years-long performance involving a rotating assortment of nearly two dozen signs placed along the property line so that they would be visible from inside the Oberholzers' home. Even with the injunction in place, the Galapos remain free to communicate the messages featured on their signs to the Oberholzers in any other way that they please. They can move the signs to their front yard. They can hang fliers on telephone poles in the neighborhood. They can place bumper stickers on their cars. They can post the messages on a social media application for neighbors. They could even stand on the sidewalk in front of the Oberholzers' home holding the signs. I could go on. The critical point here is that the present injunction is laser-targeted to remedy the nuisance while preserving the Galapos' right to express their thoughts and ideas in a non-tortious manner. Strict scrutiny's narrow tailoring requirement therefore is satisfied in this case.

Indeed, the injunction here is so narrow that one wonders whether it was even effective. Because the equity court had to avoid creating a prior restraint on the Galapos' speech, the court's injunction did not go beyond the twenty-three signs enumerated in the settlement agreement, i.e., the pre-existing signs that the Galapos did not dispute were tortious. Such orders can pose obvious enforcement problems, and equity courts

82

considering whether to issue permanent injunctions must consider the practical realities of enforcing such an order.[85] *But to the extent that Professor Chemerinsky is correct that any "effective injunction will be overbroad, and any limited injunction will be ineffective," it is important to emphasize that the present injunction is of the narrow, arguably ineffective type, not the broad, unconstitutional type.*[86]

Furthermore, even assuming that the Majority is correct that the Galapos' aim here was at least partially to educate the "local community" on "the consequences of hatred and racism," it is important to underscore that nothing in the injunction actually prevents the Galapos from doing so.[87] *The Galapos can convey their views about anti-Jewish hatred*[88] *or any other matters of public concern in any manner other than the one that the*

83

equity court concluded (and the Galapos did not dispute) was tortious. The injunction has no impact at all on the Galapos' freedom to speak to the community about anti-Jewish hatred in any of the usual ways that many of us do.[89]

84

Put simply, because the present injunction survives even strict scrutiny, I see no need to resolve whether the injunction is content-based or content-neutral. Either way, the injunction does not violate Article I, Section 7 of the Pennsylvania Constitution.

V. Conclusion

This case concerns the question of

whether equity courts have the power to enjoin tortious speech when the plaintiff otherwise lacks an adequate remedy at law. The Galapos argue that the present injunction violates the no-injunction rule, that it is an unconstitutional prior restraint on speech, and that it fails strict scrutiny. These arguments are unpersuasive. The no-injunction rule does not exist in Pennsylvania. Moreover, even if it did exist, it would not apply here because the equity court did not purport to enjoin defamatory speech. Furthermore, most states that have embraced the no-injunction rule have limited it to the preliminary injunction context. The argument that the injunction constitutes a prior restraint is also mistaken because the injunction does not restrict speech in advance of its publication. Finally, the injunction withstands application of strict scrutiny because it is narrowly tailored to serve a compelling state interest.

I respectfully dissent.

85

DISSENTING OPINION

BROBSON JUSTICE.

I respectfully dissent. As explained below, I would conclude that the trial courts of this Commonwealth have the authority to enjoin residential speech protected by Article I, Section 7 of the Pennsylvania Constitution[1] that rises to the level of a private nuisance and disrupts the quiet enjoyment of a neighbor's home. I would further conclude that the injunction (Injunction) the Court of Common Pleas of Montgomery County (trial court) entered in this matter is content neutral, furthers the Commonwealth's significant interest in protecting the privacy and quiet enjoyment of Frederick and Denise Oberholzer's (the Oberholzers) home, and burdens no more of the speech of Dr. Simon and Toby Galapo

86

(the Galapos) than necessary to protect the Oberholzers' right to residential privacy. See Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 765 (1994). As such, I would reverse the Superior Court's judgment vacating the trial court's order and reinstate the Injunction.

I. Permanent Injunctive Relief

"To justify the award of a permanent injunction, the party seeking relief 'must establish [(1)] that [the] right to relief is clear, [(2)] that an injunction is necessary to avoid an injury that cannot be compensated by damages, and [(3)] that greater injury will result from refusing rather than granting the relief requested.'" Kuznik v. Westmoreland Cnty. Bd. of Commr's, 902 A.2d 476, 489 (Pa. 2006) (quoting Harding v. Stickman, 823 A.2d 1110, 1111 (Pa. Cmwlth. 2003)). In affirming the Superior Court's vacatur of the Injunction, the Majority essentially disposes of this entire matter on the first permanent injunction prong above: the Oberholzers' right to relief is not clear. The Majority reaches that conclusion by finding that (1) the Galapos' signs are "pure speech" that do not constitute picketing, and (2) residential signs, as a matter of law, cannot disrupt the quiet enjoyment of the home, nor did the Oberholzers make such a showing in this case. In reaching that conclusion, the Majority recognizes that trial courts can enjoin residential speech protected by Article I, Section 7 of the Pennsylvania Constitution "upon a showing

that substantial privacy interests are being invaded in an essentially intolerable manner." (Majority Op. at 48-49 (quoting Cohen v. California, 403 U.S. 15, 21 (1971)).) Nonetheless, the Majority finds that the Oberholzers failed to meet that standard. For multiple reasons, I cannot agree. Ultimately, I would hold that where an individual's residential speech rises to the level of a private nuisance that disrupts the quiet enjoyment of a neighbor's home, a trial court has the authority to enjoin that speech within the limits provided in Madsen.

87

A. Analysis

I begin by setting forth the general principles of law that guide the ensuing analysis. In William Goldman Theatres, Inc. v. Dana, 173 A.2d 59 (Pa.), cert. denied, 368 U.S. 897 (1961), this Court held that Article I, Section 7 of the Pennsylvania Constitution "was designed to . . . prohibit the imposition of prior restraints upon the communication of thoughts and opinions, leaving the utterer liable only for an abuse of the privilege." Goldman Theatres, 173 A.2d at 62. As the Majority recognizes, however, "even where prior restraints potentially are in play, the nature of the communication [at issue] can alter the analysis." (Majority Op. at 40 (quoting Ins. Adjustment Bureau v. Ins. Comm'r for the Com. of Pa., 542 A.2d 1317, 1324 (Pa. 1988).) This is because "[f]reedom of speech is not absolute or unlimited." Wortex Mills v. Textile Workers Union of Am., C.I.O., 85 A.2d 851, 854 (Pa. 1952). Indeed, "[e]ven protected speech is not equally permissible in all places and at all times." Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 799 (1985). Pertinent to this case, where speech disrupts the quiet enjoyment of the home, the government generally has the power to enjoin it. See Klebanoff v. McMonagle, 552 A.2d 677, 679 (Pa. Super. 1988) ("The public's interest in protecting the well-being, tranquility, and privacy of the home is of the highest order." (citing Carey v. Brown, 447 U.S. 455, 471 (1980))), appeal denied, 563 A.2d 888 (Pa. 1989); Frisby v. Schultz, 487 U.S. 474, 485 (1988) ("[W]e have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom.").

Finally, an appellate court's standard of review of a permanent injunction entered by a trial court sitting in equity is as follows:

> *The grant or denial of a permanent injunction is a question of law. Buffalo Township v. Jones, . . . 813 A.2d 659, 664 & n.4 ([Pa.] 2002). Regarding the trial court's legal determination, our standard of review is de novo, and our scope of review is plenary. Id. ..... As in all equity matters,*

88

> *however, we must accept the trial court's factual findings and give them the weight of a jury verdict*

where they are supported by competent evidence.

Liberty Place Retail Assocs., L.P. v. Israelite Sch. of Universal Prac. Knowledge, 102 A.3d 501, 506 (Pa. Super. 2014) (citation omitted); Oberholzer v. Galapo, 274 A.3d 738, 747 (Pa. Super. 2022) (same); Buffalo Twp., 813 A.2d at 665 n.7 ("In reviewing fact-laden decisions, an appellate court displays a high level of deference to the trial court as the fact finder."). The Galapos have not challenged the trial court's findings of fact on appeal, instead raising only questions of law.

1. Nature of the Galapos' Speech

The Majority first concludes that the Galapos' signs constitute "pure speech" because the signs are not akin to picketing. (Majority Op. at 40.) In Frisby, the United States Supreme Court considered a facial challenge under the First Amendment to a Brookfield, Wisconsin ordinance that banned picketing "before or about" any residence. Frisby, 487 U.S. at 476. Construing the statute narrowly, the Supreme Court reasoned that the ordinance prohibited picketing only when directed at, or conducted in front of, individual residences-i.e., when the picketing targeted a single home. Marching through the streets or routinely on several blocks, on the other hand, was permissible under the ordinance. So construed, the Supreme Court reasoned that the ordinance was narrowly tailored to eliminate the "exact source of the 'evil' it [sought] to remedy"-i.e., the disruption of the quiet enjoyment of the home. Id. at 485. The Supreme Court explained:

"The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." Carey . . ., 447 U.S.[] at 471 . . . . Our prior decisions have often remarked on the unique nature of the home, "the last citadel of the tired, the weary, and the sick," Gregory v. Chicago, 394 U.S. 111, 125 . . . (1969) (Black, J., concurring), and have recognized that "[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value." Carey, . . . 447 U.S.[] at 471 . . . .

One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply

to avoid speech they do not want to hear, cf. Erznoznik v. Jacksonville, 422 U.S. 205, 210-11 (1975) . . .; Cohen v. California, 403 U.S. 15, 21[-]22 . . . (1971), the home is different. "That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere." Rowan v. Post Office Dept., 397 U.S. 728, 738 . . . (1970). Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to

protect, is an ability to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom. See, e.g., FCC v. Pacifica Found[.], 438 U.S. 726, 748[-]49 . . . (1978) (offensive radio broadcasts); id.[] at 759[-]60 . . . (Powell, J., concurring in part and concurring in judgment) (same); Rowan, supra (offensive mailings); Kovacs v. Cooper, 336 U.S. 77, 86[-]87 . . . (1949) (sound trucks).

This principle is reflected even in prior decisions in which we have invalidated complete bans on expressive activity, including bans operating in residential areas. See, e.g., Schneider v. State, 308 U.S. 147, 162[-]63 . . . (1939) (handbilling); Martin v. Struthers, 319 U.S. 141 . . . (1943) (door-to-door solicitation). In all such cases, we have been careful to acknowledge that unwilling listeners may be protected when within their own homes. In Schneider, for example, in striking down a complete ban on handbilling, we spoke of a right to distribute literature only "to one willing to receive it." Similarly, when we invalidated a ban on door-to-door solicitation in Martin, we did so on the basis that the "home owner could protect himself from such intrusion by an appropriate sign 'that he is unwilling to be disturbed.'" Kovacs, 336 U.S.[] at 86 . . . . We have "never intimated that the visitor could insert a foot in the door and insist on a hearing." Ibid. There simply is no right to force speech into the home of an unwilling listener.

Id. at 484-85, 487 ("The First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech."). Accordingly, the Supreme Court upheld the ordinance.

In Klebanoff, pro-life demonstrators regularly picketed for almost a year outside the home of Dr. Klebanoff, who performed abortions in his medical practice. A trial court ultimately entered a permanent injunction banning the picketing entirely, finding that the picketing caused immediate and irreparable harm to the Klebanoffs, "greater injury would occur by refusing the injunction than granting it, and that the Klebanoffs had no adequate remedy at law." Klebanoff, 552 A.2d at 677. On appeal, the picketers challenged the injunction under Article I, Section 7 of the Pennsylvania Constitution. Referencing Frisby,

90

the Superior Court held, as a matter of first impression, that "courts of this Commonwealth can enjoin activity which violates an individual's residential privacy." Id. at 678. The Superior Court then reasoned that the injunction was content neutral because it banned all picketing without reference to the content or subject matter of the protest and it contained no subjective or discriminatory enforcement.

Like the United States Supreme Court in Frisby, moreover, the Superior Court concluded that the injunction served to protect the substantial state interest, similarly recognized in Pennsylvania law, of residential privacy. Id. at 679 (citing Hull v. Curtis Pub. Co., 125 A.2d 644, 645-66 (Pa. Super. 1956) (recognizing right to residential privacy)). The Superior Court explained:

> *The public's interest in protecting the well-being, tranquility, and privacy of the home is of the highest order, Carey . . ., 447 U.S. . . . [at] 471 . . . . The home has been called "the last citadel of the tired, the weary, and the sick," Gregory . . ., 394 U.S. . . . [at] 125 . . . . The home serves to provide, among other things, a [refuge] from today's complex society where we are inescapably captive audiences for many purposes. Rowan . . ., 397 U.S. . . . [at] 738 . . . . Normally, outside of the home, consonant with the [Pennsylvania and United States] Constitution[s], we expect individuals to avoid unwanted speech, "simply by averting [their] eyes." Cohen . . ., 403 U.S. . . . [at] 21 . . . . But such avoidance within the walls of one's own house is not required. Therefore, the courts have repeatedly held that individuals are not required to welcome unwanted speech and the State may act to avoid such intrusions into the privacy of the dwelling place, Frisby[.]*

Id. The Superior Court also found that the injunction was narrowly tailored to serve that purpose, noting that "[t]he permissible scope of the restriction . . . depends on where, in the spectrum from conduct to pure speech, the speech in question lies." Id. at 680. Indeed, the Superior Court noted that "[e]ven a complete ban on all expressive activity in a traditional public forum is permissible if substantial privacy interests are being invaded in an essentially intolerable manner." Id. (citing Erznoznik, 422 U.S. at 210).

91

In that regard, the Superior Court referenced its own decision in Rouse Philadelphia Inc. v. Ad Hoc '78, 417 A.2d 1248 (Pa. Super. 1979), cert. denied, 449 U.S. 1004 (1980), wherein it explained:

> *[A]s a person's activities move away from pure speech and into the area of expressive conduct they require less constitutional protection. As the mode of expression moves from the printed page or from pure speech to the commission of public acts the scope of permissible regulation of such expression increases.*

Id. (emphasis in original) (quoting Rouse, 417 A.2d at 1254). As to the injunction, the Superior Court reasoned:

> *Much broader restrictions on expressive activities have been*

> *validated in the past for far less intrusive activities on far less substantial rights than the right to enjoy privacy in one's own home. For instance, in Members of City Council v. Taxpayers For Vincent, 466 U.S. 789 . . . (1984), the [United States Supreme] Court upheld a municipal ordinance prohibiting the posting of signs on public property in the interest of eliminating visual blight. Again, in Lehman v. City of Shaker Heights, 418 U.S. 298 . . . (1974), the [Supreme] Court held a city's prohibition of political advertising on buses constitutional because such advertising interfered with the city's interest in rapid, convenient and pleasant transit, (although commercial advertising was permitted). In this case, given the Commonwealth's substantial interest in protecting the use and enjoyment of one's own home, the injunction does no more than target the exact source of the evil it seeks to remedy. Frisby[.]*

Id. at 681. Referencing the overwhelming evidence in the factual record establishing that the picketers invaded the privacy and quiet enjoyment of the Klebanoffs' home, the Superior Court concluded that a complete ban on such activity was warranted. See id. at 679-80. Finally, because the injunction allowed ample alternatives for the picketers to express their pro-life views to Dr. Klebanoff, including at five different offices where Dr. Klebanoff practiced or by contacting "neighbors via telephone, mail, local publications or other local media," the Superior Court upheld the injunction. Id. at 682.

The trial court and Superior Court found the speech at issue in this case analogous to the picketing in Frisby and Klebanoff with regard to the targeted nature of the Galapos' signs. I agree with their reasoning. A review of the hearing transcript on the Oberholzers'

92

request for a preliminary injunction based on false light privacy, which was the only hearing at which Dr. Galapo and Mr. Oberholzer testified, demonstrates that the Galapos' intent in posting the signs was to harass the Oberholzers and coerce them to alter their behavior.

Specifically, the Oberholzers' counsel questioned Dr. Galapo as to his purpose for erecting the signs:

> *[Oberholzers' counsel]: Is that what you want somebody to believe when they see that sign, that Mr. Oberholzer and his wife were killing Jews?*
>
> *[Dr. Galapo]: No. What I want [the Oberholzers] to know is that you cannot -- what I want to accomplish by the signs is to protest behavior which we perceive as being racist towards myself, my wife, and my family.*

(Reproduced Record (R.R.) at 244a, 293a, 295a ("The purpose of the signs again is my protesting this behavior;" "[t]he purpose is to protest the behavior of what the Oberholzers have been doing in a racist

fashion to me and my family.").) Dr. Galapo then explicitly rejected the notion that he erected the signs for anyone other than the Oberholzers:

> *[Oberholzers' counsel]: You want everybody who goes by on that street either in a car, on the sidewalk, living in the neighborhood, anybody living next to the Oberholzers, you want them to see the sign that is directed to the Oberholzers; correct? You want them to see that sign?*
>
> *[Dr. Galapo]: No.*
>
> *[Oberholzers' counsel]: It's there to see?*
>
> *[Dr. Galapo]: No.*
>
> *[Oberholzers' counsel]: You said you can see it?*
>
> *[Dr. Galapo]: You can see it, but that's not what I want.*
>
> *[Oberholzers' counsel]: You want the world to know that -*
>
> *[Trial court]: Let the witness complete his answer.*
>
> *[Oberholzers' counsel]: Sure.*
>
> *[Dr. Galapo]: What I want is the Oberholzers to stop their behavior of racism as we perceive it, and then the signs will come down. And further proof of this, Your Honor, is that we've taken them down on our own volition three times. Three times.*
>
> *We agreed in this consent order again to take it down in hope that they would cut out their behavior, that both Mr. Oberholzer and his wife*

93

> *would stop their shenanigans and their games of harassing my children, all within this context of calling my kids fucking Jews -- and I apologize for using those words -- of calling me a fucking Jew, of speaking about us as Jews and therefore some deficiency in us.*
>
> *And over time, even when I felt that the threat was diminished, I took down signs. But every time I'd take them down, unfortunately, they would increase their behavior and try to push the card and push the line, and that's where we stand, and that's why the signs were up.*

(Id. at 249a-251a (emphasis added).)

Dr. Galapo stated that the signs are directed to the Oberholzers and that he was unaware of the extent to which the neighbors could see the signs from their homes. (Id. at 270a-271a.) In fact, Dr. Galapo testified that it was irrelevant whether the neighbors saw the signs because that was not the intent of the signs; rather, Dr. Galapo explained that "[t]he intent of the signs were for the Oberholzers to change a behavior which we perceived as being racist towards my kids, my wife, and me." (Id. at 257a, 261a-262a, 270a ("[Oberholzers' counsel]: The signs are directed to the Oberholzers, and the content, the content on the signs, those

words, that's also direct[ed] to the Oberholzers? [Dr. Galapo]: Correct.").) Finally, and most critically, Dr. Galapo indicated that the message on the signs was irrelevant to his primary goal of stopping the Oberholzers' racist behavior: "The issue is getting somebody to stop behavior that we perceive as racist. These signs--it could be any sign. It doesn't matter." (Id. at 306a (emphasis added).)

To be clear, I in no way endorse the Oberholzers' anti-semitic behavior toward the Galapos. In fact, I find their behavior repugnant. But I cannot ignore that this case concerns the legality of the Galapos' speech, not the Oberholzers'. And the foregoing testimony clearly demonstrates that Dr. Galapo erected the signs to protest the perceived anti-semitic behavior of the Oberholzers against the Galapos and to coerce them to alter their behavior. Once the signs accomplished that goal, Dr. Galapo testified that he would take the signs down. The message on the signs was irrelevant to the ultimate goal of

94

coercion. Further, while I recognize that the Galapos' signs potentially relate to a "public concern," Snyder v. Phelps, 562 U.S. 443, 451-52 (2011), the signs were not directed toward the public. Instead, the Galapos erected the signs in their back yard and directed them strictly toward the Oberholzers-i.e., one private home-while placing zero signs in their front yard for the public to see. Additionally, if the Galapos intended to reach a broader audience with the signs, there would be no need for the Galapos to appeal from the trial court's order entering the Injunction because, under the Injunction's limitations, the signs were still visible to the neighbors, just not the Oberholzers. The nail in the coffin that cements these points is Dr. Galapo's testimony that it was irrelevant whether anyone other than the Oberholzers saw the signs. Thus, the foregoing makes clear that the Galapos' signs were targeted speech designed to disrupt the quiet enjoyment of the Oberholzers' home.

The Majority disagrees, however, and concludes that the Galapos' signs "constituted an act of pure speech" because the signs "do[] not fit the bill of 'picketing.'" (Majority Op. at 40.) The Majority reaches that conclusion because the signs lack the non-speech elements associated with picketing, such as assembly, that form "the basis and justification for state interference." (Id. (quoting 1621, Inc. v. Wilson, 166 A.2d 271, 275 (Pa. 1960)).) The Majority paints the analysis as black and white; either (1) the speech is picketing, which is targeted speech the state can enjoin, or (2) it is "pure speech" that is impregnable. The interest that animated the decisions in Frisby and Klebanoff, however, was the protection of residential privacy. Neither case stands for the proposition that picketing is the only manner of speech that can disrupt the quiet enjoyment of the home. And to narrow those cases into such a dichotomy-i.e., either picketing or "pure speech"-overlooks that the issue here is one of first impression that does not fall cleanly into this Court's or the United States Supreme Court's precedent.

95

Nonetheless, Frisby and Klebanoff make clear that the analysis revolves around whether the speech at issue disrupts the quiet enjoyment of the home, not whether the speech constitutes picketing.

In sum, I would conclude that the speech at issue is targeted speech that is intended to harass the Oberholzers and coerce them to alter their behavior, which makes the speech at issue similar in nature to the picketing activity in cases such as Frisby and Klebanoff. As explained below, this conclusion lends support to my belief that trial courts in the Commonwealth-and the trial court in this matter-have the authority to enjoin such speech where it can be shown that the speech disrupts the quiet enjoyment of the home.

2. Trial Court Authority to Enjoin Nuisance

The Majority recognizes that the Oberholzers' claim for permanent injunctive relief arises in private nuisance and that the trial court, sitting as a court of equity, entered the Injunction on that basis and not defamation or false light privacy. (Id. at 14 n.6 ("Moving forward, then, we operate under the understanding that injunctive relief was granted only on the nuisance cause of action.").) The Restatement (Second) of Torts defines private nuisance generally as "a nontrespassory invasion of another's interest in the private use and enjoyment of land." Rest. 2d Torts § 821D. Section 822 of the Restatement (Second) of Torts sets forth the general rule for demonstrating a private nuisance:

> *One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is . . .*
>
> *(a) intentional and unreasonable . . . .*

Rest. 2d Torts § 822. "It is hornbook law that a [c]ourt of [e]quity possesses jurisdiction to . . . enjoin a nuisance." Gardner v. Allegheny Cnty., 114 A.2d 491, 498 (Pa. 1955).

In Youst v. Keck's Food Services, Inc., 94 A.3d 1057 (Pa. Super. 2014), for example, a neighbor erected drainage pipes on their property that changed the direction of a creek to flow directly onto Denny Youst's land. Youst operated a farm on his property

96

and testified that the redirection of the creek significantly harmed his ability to pasture and water his animals and that some of his animals died as a result. Youst, 94 A.3d at 1062-63. The trial court concluded that the neighbor's conduct constituted a private nuisance necessitating permanent injunctive relief, and the Superior Court affirmed. Referencing Section 821D of the Restatement (Second) of Torts, the Superior Court reasoned that the evidence clearly established that the neighbor's diversion of the creek onto Youst's land interfered with the quiet enjoyment of his property. Id. at 1071-74, 1079. Accordingly, the Superior Court concluded that the neighbor must "[u]ndoubtedly . . . abate th[e] nuisance . . . since the nuisance is continuing [and] the trial court possessed the authority to issue a permanent injunction." Id. at 1079. See

also Rhodes v. Dunbar, 57 Pa. 274, 286 (Pa. 1868) (discussing permanent injunction in relation to proposed "planing-mill" near residential property that would create noise, sawdust, smoke, and soot allegedly constituting private nuisance).

The Majority rightly points out that the foregoing nuisance law does not involve Article I, Section 7 of the Pennsylvania Constitution. (See Majority Op. at 47 n.21.) The Majority, therefore, references other decisions to reach its ultimate conclusion that the trial court lacked the authority to enjoin the Galapos' speech in this case. For example, in Willing v. Mazzocone, 393 A.2d 1155 (Pa. 1978), the law firm of Quinn & Mazzocone represented Helen Willing in a workers' compensation matter. Believing that Quinn & Mazzocone defrauded her of funds that she was owed, Willing demonstrated in a public plaza directly outside Quinn & Mazzocone's offices. Specifically, Willing marched back and forth for several hours a day in the plaza wearing a "sandwich-board" around her neck stating: "LAW FIRM of QUINN MAZZOCONE Stole money from me and Sold-me-out-to-the INSURANCE COMPANY." Willing, 393 A.2d at 1156 (emphasis in

97

original). Willing also pushed a shopping cart draped with an American flag and continuously rang a cowbell and blew a whistle to attract attention.

Attorneys Carl Mazzocone and Charles Quinn filed suit in equity court seeking to enjoin Willing from further demonstration. After several hearings, it was adduced that Quinn & Mazzocone did not defraud Willing of any funds, but Willing refused to accept that factual finding. See id. at 1157. Accordingly, the trial court enjoined Willing from "further unlawful demonstration, picketing, carrying placards which contain defamatory and libelous statements and or uttering, publishing and declaring defamatory statements against [Quinn & Mazzocone]." Id. The Superior Court affirmed, but it modified the trial court's injunction to read: "Helen R. Willing, be and is permanently enjoined from further demonstrating against and/or picketing Mazzocone and Quinn, Attorneys-at-Law, by uttering or publishing statements to the effect that Mazzocone and Quinn, Attorneys-at-Law stole money from her and sold her out to the insurance company." Id.

This Court reversed, recognizing in the first part that Article I, Section 7 of the Pennsylvania Constitution is designed to "prohibit the imposition of prior restraints upon the communication of thoughts and opinions, leaving the utterer liable only for an abuse of the privilege." Id. (emphasis added) (quoting Goldman, 173 A.2d at 62). Rather, this Court adhered to the principle that equity lacks the power to enjoin publication of defamatory matter. Id. at 1158. In support of that rationale, this Court emphasized that Quinn & Mazzocone had an adequate remedy at law in the form of money damages that could make them whole for the defamation Willing perpetrated. Id.

Based seemingly in part on the rationale of cases such as Willing, the Majority fashions a new legal standard for a trial court to enjoin residential speech protected by Article I, Section 7 of the Pennsylvania Constitution. Specifically, the Majority explains that "although trial courts generally lack the power to enjoin speech

under Article I,

98

Section 7, because '[f]reedom of speech is not absolute or unlimited,' Wortex Mills, 85 A.2d at 854, we also hold that courts may enjoin speech upon a showing that 'substantial privacy interests are being invaded in an essentially intolerable manner.'" Cohen, 403 U.S. at 21." (Majority Op. at 49-50 (emphasis added).) The Majority draws that standard from Cohen v. California, 402 U.S. 15 (1971), a United States Supreme Court decision concerning the First Amendment to the United States Constitution.

In Cohen, the appellant was observed wearing a jacket bearing the words "Fuck the Draft" in a county courthouse where women and children were present. The appellant was arrested and subsequently convicted of violating a since-amended California criminal statute that, at the time, prohibited "'maliciously and willfully disturb(ing) the peace or quiet of any neighborhood or person . . . by . . . offensive conduct."[2] Cohen, 403 U.S. at 16 (quoting Cal. Penal § 415). The United States Supreme Court struck down the statute and reversed the appellant's conviction, reasoning that the appellant's jacket was not obscene because it lacked erotic features and the wording on it did not constitute fighting words. Further, the Supreme Court commented on other "offensive" speech:

> *Finally, in arguments before this Court much has been made of the claim that Cohen's distasteful mode of expression was thrust upon unwilling or unsuspecting viewers, and that the State might therefore legitimately act as it did in order to protect the sensitive from otherwise unavoidable exposure to appellant's crude form of protest. Of course, the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense. See, e.g., Organization for a Better Austin v. Keefe, 402 U.S. 415 . . . (1971). While this Court has recognized that government may properly act in many situations to prohibit intrusion into the privacy of the home of unwelcome views and ideas which cannot be totally banned from the public dialogue, e.g., Rowan v. United States Post Office Dept., 397 U.S. 728 . . . (1970), we have at the same time consistently stressed that 'we are often 'captives' outside the sanctuary of the home and subject to objectionable speech.' Id., at 738 . . . . The ability of government, consonant with the Constitution, to*

99

> *shut off discourse solely to protect others from hearing it is, in other words, dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner. Any broader view of this authority would effectively empower a majority to silence dissidents simply as a matter of*

personal predilections.

Cohen, 403 U.S. at 21. Absent a more compelling state interest, the Supreme Court concluded that California could not, consistent with the First and Fourteenth Amendments, "make the simple public display here involved of this single four-letter expletive a criminal offense." Id. at 26.

I agree with the holdings in Willing and Cohen. Critically, however, neither case concerned the quiet enjoyment of the home. Immediately, that distinction sets this case apart. Further, both Willing and Cohen lacked any countervailing right that required balancing against the right to free speech under Article I, Section 7 of the Pennsylvania Constitution and the First Amendment to the United States Constitution. There is no constitutional right not to be defamed or, as Cohen makes clear, to not be offended in a public setting.[3] This renders Willing and Cohen of little-to-no precedential value to the present matter where a balancing of rights is necessary, and it provides no support for the new legal standard the Majority has adopted. And, as explained in more detail in Section II of this Opinion, a balancing of rights is precisely what the trial court in this matter did-i.e., the trial court properly tailored the Injunction to provide adequate protection both to the Oberholzers' right to the quiet enjoyment of the home and to the Galapos' right to free speech under Article I, Section 7. Accordingly, because private nuisance is distinct from other torts in that it inherently involves the quiet enjoyment of the home, I believe that trial courts have the authority to enjoin residential speech protected by Article I,

100

Section 7 that rises to the level of a private nuisance and disrupts the quiet enjoyment of the home within the limits imposed by Madsen.[4]

3. Quiet Enjoyment of the Home

Lastly, critical to the foregoing analysis is whether the Galapos' signs did, in fact, disrupt the quiet enjoyment of the Oberholzers' home. At the preliminary injunction hearing, Mr. Oberholzer testified that when he looked out his back window he saw "[n]othing but signs," that the signs made him feel "[h]orrible," and that, as a result, he saw a doctor who prescribed him anti-anxiety medication, which he used throughout the day and to sleep at night. (R.R. at 352a-353a.) Mr. Oberholzer also generally explained that neighbors negatively changed their attitudes toward him and his wife. (See id. at 356a-358a.) Mrs. Oberholzer testified via deposition that their neighbors were "acting differently" toward them as a result of the signs, a parent approached her at the daycare facility at which Mrs. Oberholzer works regarding the signs, and that the Oberholzers stopped hosting people at their home because they did not want to have to explain the signs. (Id. at 143a-147a.) Mrs. Oberholzer also explained that her doctor increased her anti-anxiety medication to three times a day. (Id. at 149a.)

101

Based on the Oberholzers' testimony, "as well as the pointed preliminary injunction hearing testimony of [Dr.] Galapo," the trial court found that the Galapos' actions "severely and negatively impact[ed] the [Oberholzers'] well-being,

tranquility, and quiet enjoyment of their home." (Trial Ct. Op. at 7.) The Majority, however, concludes that the trial court's determination in that regard "is not equivalent to a finding 'that substantial privacy interests are being invaded in an essentially intolerable manner[.]'" (Majority Op. at 53 (quoting Cohen, 403 U.S. at 21).) In other words, because the trial court did not apply the Majority's articulation of its new legal standard, the trial court erred as a matter of law and the Oberholzers are not entitled to relief. First, as explained above, the Majority provides no basis for why its new legal standard should apply rather than determining, like the trial court did in this matter, that the Galapos' speech constitutes a private nuisance that disrupts the quiet enjoyment of the Oberholzers' home. Further, if the Majority's standard is, indeed, a heightened one and the trial court was unaware of this new law, the Majority should remand this matter. On remand, the trial court can reassess whether the Oberholzers established that the Galapos intolerably invaded the Oberholzers' substantial privacy interest.

Nonetheless, even accepting the Majority's standard, I fail to see how a severe and negative impact upon the well-being, tranquility, and quiet enjoyment of the Oberholzers' home is insufficient to warrant injunctive relief. Surely, the quiet enjoyment of the home is a "substantial privacy interest." See, inter alia, Frisby, supra. The Majority also offers no explanation for how a severe and negative impact on that interest has any meaningful distinction from an "intolerable invasion" of privacy. Simply because the trial court did not intone the magic words the Majority would require does not mean that it reached an erroneous result.

102

Not only does the Majority apply a misguided and untested legal theory to this matter, but it also disregards the trial court's factual findings that have support in the record-all seemingly to reach its desired result of denying the Oberholzers relief. To reiterate, an appellate court's standard of review of a permanent injunction entered by a trial court sitting in equity is as follows:

> *The grant or denial of a permanent injunction is a question of law. Regarding the trial court's legal determination, our standard of review is de novo, and our scope of review is plenary. As in all equity matters, however, we must accept the trial court's factual findings and give them the weight of a jury verdict where they are supported by competent evidence.*

Liberty Place, 102 A.3d at 506 (emphasis added) (citations omitted); Oberholzer, 274 A.3d at 747 (same); Buffalo Twp., 813 A.2d at 665 n.7 ("In reviewing fact-laden decisions, an appellate court displays a high level of deference to the trial court as the fact finder."). The Majority fails to adhere to this standard. Instead, despite insisting that it takes the trial court's factual findings and credibility determinations "at face value," (Majority Op. at 55 n.2.), it substitutes its contrary assessment of the harm to the Oberholzers with that of the trial court, explaining:

> *Here, though, we are unconvinced that the Galapos' signs intolerably intrude upon any substantial privacy interests*

held by the Oberholzers. The Galapos' signs are stationed exclusively on their own property and they lack any coercive or other element that might implicate the Oberholzers' privacy interests. See Deposition of Denise Oberholzer, 3/13/18, at 42-43 (admitting none of the signs mentioned the Oberholzers by name, encroached their property, or were threatening); Deposition of Frederick Oberholzer, 3/13/18, at 29-30 (same). Nor do the signs present any type of actionable, non-speech-based nuisance, like excessive illumination or loud noises. See Kohr v. Weber, 166 A.2d 871, 874 (Pa. 1960) ("loud noises, glaring illumination, and swirling dust clouds which" accompanied facility for drag-racing properly enjoined). The signs are just that: signs. All homeowners at one point or another are forced to gaze upon signs they may not like on their neighbors' property - be it ones that champion a political candidate, advocate for a cause, or simply express support or disagreement with some issue.

103

(Majority Op. at 49 (emphasis added).) Indeed, the Majority baldly concludes that "the record does not support . . . a conclusion" that the Galapos' signs intolerably invade the Oberholzers' substantial privacy interest without any discussion of the testimony or facts the trial court found significant to its conclusion. (Id. at 53.) Because the Majority's doing so displaces the trial court's factual findings, I cannot agree.

B. Conclusion

To summarize, I view the Galapos' signs as targeted speech intended to harass the Oberholzers and coerce them to alter their behavior. As a result, I believe the Galapos' speech rises to the level of a private nuisance, which the trial court had the authority to enjoin. Finally, the trial court's factual determination that the Galapos' signs disrupted the quiet enjoyment of the Oberholzers' home is supported by the record, and, therefore, this Court should not disturb it. And because this case concerns the quiet enjoyment of the home and not some other "substantial privacy interest," I believe the trial court's determination is sufficient to support the Injunction.

II. Tailoring of the Injunction under Madsen

It remains to be determined, however, whether the Injunction is content neutral and burdens no more of the Galapos' speech than necessary to serve a significant governmental interest. Madsen, 512 U.S. at 765. To answer that question, I look no further than the Superior Court's and Judge Stabile's well-reasoned analyses. Indeed, I agree with the Superior Court that the Injunction is content neutral because the Injunction does not refer to the content or subject of the Galapos' signs and because the purpose of the Injunction, as stated by the trial court, is to protect the quiet enjoyment of the Oberholzers' home-not to censor the message on the Galapos' signs. Oberholzer, 274 A.3d at 757. Support for the Superior Court's reasoning in that

regard can be found in Madsen, Frisby, Klebanoff, and SmithKline Beecham Corp. v. Stop Huntingdon Animal Cruelty USA,

104

959 A.2d 352 (Pa. Super. 2008), all of which reached the same conclusion. See SmithKline, 959 A.2d at 358-59 (upholding facially content-neutral injunction banning "picketing, demonstrating, leafleting, protesting or congregating at the homes of the Individual Plaintiffs").

I further agree with Judge Stabile's concurring opinion that it is difficult to "fathom a more narrowly tailored remedy . . . than that ordered by the trial court." Oberholzer, 274 A.3d at 770 (Stabile, J., concurring). As Judge Stabile explained:

> *The trial court took a very measured and narrow approach to fashioning its injunction to protect [the Oberholzers'] privacy interest in their home by ordering only that the signs be positioned so as not to face [the Oberholzers'] property. When this initial directive proved ineffective because the messages nonetheless could be read through the back of the signs, the [trial] court entered an amended injunction (now on appeal) ordering that the sign material be opaque so that the messages could not be seen even when the signs were turned away from [the Oberholzers'] home. The trial court did not ban or seek to modify any content of the offending signs. It did not limit the number of signs or the number of messages that could be posted. No restriction was placed on the time when the signs could be placed, the location of the signs upon [the Galapos'] property, or who may see the signs other than [the Oberholzers]. In sum, the only restraint the [trial] court imposed upon [the Galapos'] personal protest against [the Oberholzers] was to construct the signs of opaque material and to face the signs away from [the Oberholzers'] home. In my opinion, the trial court took the most conservative approach to enjoining [the Galapos'] conduct that burdened no more speech than necessary to serve a significant government interest to address the unwanted messaging targeted at [the Oberholzers] that could be seen from within the privacy of their home. . . . Under these circumstances, I would conclude that the trial court's improper reliance upon a time, place and manner standard to fashion its injunctive remedy was harmless error not warranting a remand.*

Id. at 769-70 (Stabile, J., concurring). In fact, the trial court's Injunction left a multitude of channels for the Galapos to disseminate anti-hate and anti-racism messages, including, but not limited to, leaflets, phone banking, billboards, and picketing in public areas or throughout their residential neighborhood. The Injunction simply prevented the Galapos from directing their messages at the Oberholzers in a manner disrupting the quiet

105

enjoyment of their home. Finally, the relevant case law convincingly demonstrates that protecting the quiet enjoyment of the home is a significant governmental interest. Carey, 447 U.S. at 471 ("The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society."). Accordingly, I see no error in the trial court's reasoning supporting the Injunction.

III. Conclusion

I would conclude that the trial courts of this Commonwealth have the authority to enjoin residential speech protected by Article I, Section 7 of the Pennsylvania Constitution that rises to the level of a private nuisance and disrupts the quiet enjoyment of a neighbor's home. I would further find that the Injunction is content neutral, furthers the Commonwealth's significant interest in protecting the privacy and quiet enjoyment of the Oberholzers' home, and burdens no more of the Galapos' speech than necessary to protect the Oberholzers' right to residential privacy. Madsen, 512 U.S. at 765. Accordingly, I would reverse the Superior Court's judgment vacating the trial court's order and reinstate the Injunction.

Notes:

[1] See N.T. Deposition of Denise Oberholzer, 3/13/18, at 6-7, 12-13 (admitting she made the statement, was aware the Galapos are Jewish, and intended her "unkind term" to upset Dr. Galapo); see also N.T. Deposition of Frederick Oberholzer, 3/13/18, at 17 ("my wife yelled a racial slur, or whatever you want to call it"). Apparently, similar incidents of this kind had occurred on other occasions as well. See, e.g., N.T. Preliminary Injunction Hearing, 10/18/16, at 73 (Dr. Galapo alleging that, during a prior instance when his kids were swimming in his backyard, "Mrs. Oberholzer opened up the second-story window [of her home and] screamed out, you fucking Jewish kids, can't you shut up"); see id. at 46 (stating the Oberholzers had "discuss[ed] me and my wife as being arrogant Jews who are cheap"); see also N.T. Deposition of Frederick Oberholzer, 3/13/18, at 18 (admitting he may have called Dr. Galapo an "arrogant son of a bitch"); id. at 23 (asserting Dr. Galapo "called me a racist from his deck . . . on our holiday, on Easter Sunday").

[2] The signs bore the following messages:

(1) No Place 4 Racism

(2) Hitler Eichmann Racists

(3) Racists: the true enemies of FREEDOM

(4) No Trespassing - Violators Will Be Prosecuted

(5) Warning! Audio & Video Surveillance On Duty At All Times

(6) Racism = Ignorant

(7) # Never Again

(8) WWII: 1,500,000 children butchered: Racism

(9) Look Down on Racism

(10) Racist Acts will be met with Signs of Defiance

(11) Racism Against Kids Is Not Strength, It's Predatory

(12) Woe to the Racists. Woe to the Neighbors

(13) Got Racism?

(14) Every Racist Action Must be Met With a Sign of Defiance

(15) Racism is Self-Hating; "Love thy Neighbor as Thyself"

(16) Racism - Ignore It and It Won't Go Away

(17) Racism - The Maximum of Hatred for the Minimum of Reason

(18) RACISM: It's Like a Virus, It Destroys Societies

(19) Racists Don't Discriminate Whom They Hate

(20) Hate Has No Home Here [in multiple languages]

(21) Every Racist Action Must Have an Opposite and Stronger Reaction

(22) Quarantine Racism and Society Has a Chance

(23) Racism Knows No Boundaries.

Confidential Settlement Agreement, 6/5/19, at ¶5.

[3] We note the Oberholzers identified several other factual bases, in addition to the signs, to support their various causes of action. See, e.g., Amended Complaint, 7/5/16, at ¶16 (asserting the Galapos unnecessarily contacted police about the Oberholzers' dogs supposedly barking); id. at ¶22 (alleging the Galapos "installed new high density, powerful floodlights on the rear deck of their house, and purposely directed the lighting towards [the Oberholzers'] property and the back of their house"). However, these other claimed nuisances have either abated or been abandoned by the Oberholzers. See id. at ¶31 (acknowledging the Galapos' "[u]se of the deck lights abated after [the Oberholzers] filed complaints, and by mid-January 2016, . . . [the] Galapos turned the deck lights away from [the Oberholzers'] home"); see also N.T. Preliminary Injunction Hearing, 10/18/16, at 24 (counsel for the Oberholzers conceding any claims concerning their dogs "isn't part of the injunction"). In fact, their counsel "clarif[ied]" at the preliminary injunction hearing that "the only activity sought to be enjoined was the signage[.]" Trial Court Op., 4/28/17, at 4. As such, our focus in this appeal is exclusively on the signs.

[4] Within this filing, the Oberholzers attempted to walk back the concession their counsel made at the preliminary injunction hearing, i.e., that the Oberholzers were only seeking an injunction as to count four of the amended complaint. See Supplemental Petition for Preliminary Injunction, 11/3/16, at 2 (noting counsel at the hearing "did not

articulate an argument summarizing [the Oberholzers'] right to enjoin" the signs "as an intrusion upon seclusion (Count II)" but stating, "this supplemental brief will"). However, the trial court appears to have deemed the issue abandoned, as it did not address it in its later opinion. See Trial Court Op., 4/28/17, at 2 (stating the Oberholzers' counsel at the preliminary injunction hearing "narrowed the request for a preliminary injunction, as arising only under the fourth count").

[5] Within their cross-motion for summary judgment, the Oberholzers requested permanent injunctive relief. In contrast to their request for preliminary injunctive relief, in which they ultimately narrowed their request to the false light claim, see supra note 4, for purposes of permanent injunctive relief, they returned to their original, broader position - that is, they sought injunctive relief with respect to four causes of action. See Memorandum in Support of Cross-Motion for Summary Judgment, 8/27/18, at 21 ("permanent injunctive relief . . . must be granted . . . on the invasion of privacy and nuisance claims"); id. at 25 (since signs "libel and defame the Oberholzers, . . . [p]ermanent injunctive relief . . . is warranted"); id. at 30 ("permanent injunctive relief[ ] is warranted for the Oberholzers on the claim of false light").

[6] Although not explicit, the trial court's emphasis in its opinion on the "severe interference with [the Oberholzers'] residential privacy[,]" Trial Court Op., 9/12/19, at 11, suggests it granted permanent injunctive relief with respect to the nuisance cause of action. Notably, the court did not discuss false light at all; it dismissed with prejudice the intrusion upon seclusion claim; and, as just discussed, it took pains in its opinion to explain it was not granting injunctive relief as to the defamation cause of action. Moving forward, then, we operate under the understanding that injunctive relief was granted only on the nuisance cause of action.

[7] Appellants have since abandoned this argument, so we do not address it further.

[8] These claims all implicate "the right to free speech as guaranteed by the state and federal constitutions" and thus "our standard of review is de novo and our scope of review is plenary." S.B., 243 A.3d at 104.

[9] The ACLU of Pennsylvania filed an amicus curiae brief in support of the Galapos. Noting our decision in Willing pre-dated our seminal decision in Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991), amicus asks us to engage "an injunction-specific Edmunds analysis of Article I, §7." ACLU's Brief at 3. However, "[g]iven this Court's extensive consideration of Article I, Section 7 under the Edmunds factors in Pap's [A.M.]," we find "no reason to engage in a full-blown Edmunds analysis here." DePaul v. Commonwealth, 969 A.2d 536, 547 (Pa. 2009).

[10] See Pa. Const. of 1776, Declaration of Rights, art. XII ("That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained."); id. at art. XVI ("That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance."); Pa. Const. of 1776, Frame of Government, §35

("The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.").

[11] This introductory and concluding language was retained by subsequent Constitutions.

[12] Regarding the legislative history of the free speech provision found in subsection (b), it has been observed that

> *Section 7 of article 9, relating to liberty of the press, was originally reported to the convention by the committee to draft a proposed constitution, on December 21, 1789, in the following form:" . . . The free communication of thoughts and opinions is one of the most invaluable rights of men, and every citizen may freely speak, write, and print, being responsible for the abuse of that liberty." Proceedings of Convention, P. 162, (Harrisburg, 1825.) This was reported from committee of the whole on February 5, 1790, in the same form, (dropping only the word "most" before the word "invaluable")[.]*

Commonwealth v. McManus, 22 A. 761, 762 (Pa. 1891) (Mitchell, J., concurring).

[13] Subsection (c) was retained in the Constitution of 1838 but amended in 1874 to read: "No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases." Pa. Const. of 1874, art. I, §7. This language was retained in the 1968 Constitution. However, in Commonwealth v. Armao, 286 A.2d 626 (Pa. 1972), we held this portion of Article I, Section 7 was "repugnant to the guarantees of the First Amendment" in light of the United States Supreme Court's decision in New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (holding that in a civil action by a public official against a newspaper, First Amendment required clear and convincing proof that a defamatory falsehood alleged as libel was published with "actual malice"). Armao, 286 A.2d at 632. Nevertheless, we found that sentence was "severable" from the remainder of Section 7. Id.

We also observe the right to assemble and petition was retained in Article IX, Section 20 of the 1790 Constitution, in wording that has remained unchanged to the present Constitution, but it now resides in Article I, Section 20. See Pa. Const. art. I, §20 ("The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.").

[14] "Vermont's Constitution of 1777 adopted language identical to that of Pennsylvania. But these protections of 'speech' stood alone until the adoption of the First Amendment in 1791." Kreimer, §10.1, at

293 n.3 (citation omitted).

[15] It is worth noting "the right to speak carries with it its inevitable counterpart, the right not to speak." Dudek v. Pittsburgh City Fire Fighters, Local No. 1, 228 A.2d 752, 755 (Pa. 1967); see id. ("It is just as illegal to compel one to speak when he prefers to remain silent as it is to gag one when he wishes to talk."). We also observe, parenthetically, that over one hundred years ago we intimated, without much elaboration, that the right to speech "cannot lawfully be infringed . . . by individuals, any more than by the state[.]" Spayd v. Ringing Rock Lodge No. 665, Brotherhood of R.R. Trainmen of Pottstown, 113 A. 70, 72 (Pa. 1921); see W. Pa. Socialist Workers 1982 Campaign, 515 A.2d at 1335 ("We are not suggesting that the rights enumerated in the Declaration of Rights exist only against the state.").

[16] The majority's reliance on Blackstone in William Goldman Theatres implicitly rejected Justice Eagen's view in dissent that "the delegates to the Constitutional Convention [of 1790] were more influenced by the results of the United States Constitutional Convention, which also was aware of the long history of oppression, than by Blackstone[.]" 173 A.2d at 72 (Eagen, J., dissenting).

[17] Although Willing is a plurality decision, its central conclusions hold precedential value. This is because Justice Roberts, joined by Justice O'Brien, held in concurrence that "[t]he injunction in this case is a classic example of a prior restraint on speech." 393 A.2d at 1159 (Roberts, J., concurring). Likewise, Justice Pomeroy's concurrence explained that his "views leading to this result are fully and clearly set forth in" Judge Jacob's dissent in the Superior Court, which held the same. Id. at 1160 (Pomeroy, J., concurring). Thus, a four-Justice majority in Willing held the enjoinment of defamatory speech is "clearly prohibited by Article I, Section 7[.]" Id. at 1157. Cf. Dissenting Opinion (Wecht, J.) at 12 (labeling Willing a "nonbinding plurality opinion").

[18] In dissent, Justice Brobson "conclude[s] that the speech at issue is targeted speech that is intended to harass the Oberholzers and coerce them to alter their behavior, which makes the speech at issue similar in nature to [ ] picketing[.]" Dissenting Opinion (Brobson, J.) at 11 (emphasis added). But the words "harass" and "coerce," which obviously carry legal significance in this context, were never used by the permanent injunction judge, the factfinder in this matter. What he said instead was that the Galapos' "conduct arguably does not fit the definition of picketing[.]" Trial Court Op., 9/12/19, at 9 (emphasis added). On that point we agree. We disagree, however, with the "harassing" and "coercion" gloss added by the dissent.

[19] We adhere to the view that "First Amendment authority remains instructive in construing Article I, Section 7[.]" DePaul, 969 A.2d at 547. Accordingly, to the extent we rely upon federal caselaw, we do so purely as a means of independently adopting such principles for purposes of Article I, Section 7.

[20] Justice Wecht charges us with "obscur[ing] the important differences between the prior restraint doctrine" and what he calls the "no-injunction rule" (also known as the common law rule that equity will not enjoin a defamation). Dissenting

Opinion (Wecht, J.) at 2. But, in reality, it is Justice Wecht who gravely misunderstands the two doctrines and their application in this Commonwealth. Most critically, contrary to Justice Wecht's apparent belief, we do not "adopt the disfavored theory that equity will not enjoin defamation." Id. at 15. Defamation is not at issue here. Neither is the common law. The relevant question we agreed to consider is "[w]hether the publication of language which gives rise to tort claims other than defamation cannot be enjoined under Article I, Section 7[.]" Oberholzer, 286 A.3d at 1233 (emphasis added). This unearths the root of the problem with Justice Wecht's view: he conflates the common law principle with the constitutional command found in Article I, Section 7. Indeed, among the bevy of law review articles he combs for support, Justice Wecht overlooks the important fact that Professor David S. Ardia, "whose scholarship has greatly informed [Justice Wecht's] understanding of this case," Dissenting Opinion (Wecht, J.) at 6 n.17, expressly cautions that "several courts have held that the free speech guarantees in their state constitutions pose an independent bar to injunctive relief in defamation cases." David S. Ardia, Freedom of Speech, Defamation, and Injunctions, 55 Wm. & Mary L. Rev. 1, 50 (2013) (emphasis added). In addition to citing our decision in Willing for that proposition, Professor Ardia identifies six other state supreme courts - California, Louisiana, Missouri, Montana, Nebraska, and Texas - which have similarly held their state constitution counterparts to our Article I, Section 7 independently operate to bar injunctions in defamation cases. See id. at 50 n.230, citing Dailey v. Super. Ct., 44 P. 458, 460 (Cal. 1896), State ex rel. Liversey v. Judge of Civil Dist. Court, 34 La. Ann. 741, 746 (La. 1882), Life Ass'n of Am. v. Boogher, 3 Mo.App. 173, 179-80 (Mo. 1876), Lindsay & Co. v. Mont. Fed'n of Labor, 96 P. 127, 131 (Mont. 1908), Howell v. Bee Pub. Co., 158 N.W. 358, 359 (Neb. 1916), and Mitchell v. Grand Lodge, Free & Accepted Masons of Tex., 121 S.W. 178, 179 (Tex. Civ. App. 1909). Clearly, then, it is incorrect to say the bar on speech-based injunctions "does not emanate from Article I, Section 7" and that we are the only "state in the entire nation" that has constitutionalized such a bar. Dissenting Opinion (Wecht, J.) at 15-16. Professor Ardia's own work proves the opposite on both points.

To reiterate, we agree with Professor Ardia that this Court in Willing held that, regardless of the common law, injunctions of defamatory speech are "clearly prohibited by Article I, Section 7[.]" 393 A.2d at 1157. Simply calling Willing a "nonbinding plurality opinion" does not make it so. Dissenting Opinion (Wecht, J.) at 12; see also id. at 19-20 and n.70 (calling our decision in William Goldman Theatres "plainly wrong" and adopting Justice Eagen's dissent). And no number of law review articles or federal cases concerning the common law can trump our binding precedent on this matter of state constitutional law. As for the question left unanswered by Willing, i.e., whether the constitutional bar we recognized in that case with respect to defamatory speech also extends to other speech-based torts, we turn to it next.

[21] Justice Brobson concludes a "private nuisance is distinct from other torts" this

Court has previously held cannot be enjoined under the free speech principles of Article I, Section 7. Dissenting Opinion (Brobson, J.) at 15. He cites in support the Restatement (Second) of Torts and three cases that generally stand for the proposition that trial courts possess the power to enjoin nuisances. See id. at 11-12, citing Rest. 2d Torts §822, Gardner v. Allegheny Cnty., 114 A.2d 491 (Pa. 1955), Rhodes v. Dunbar, 57 Pa. 274 (Pa. 1868), and Youst v. Keck's Food Services, Inc., 94 A.3d 1057 (Pa. Super. 2014). But none of those cases involved speech or Article I, Section 7. More to the point, our learned colleague forgets the venerable principle that "the polestar of constitutional analysis . . . must be the plain language of the constitutional provision[ ] at issue." In re Bruno, 101 A.3d 635, 659 (Pa. 2014). The plain language of Article I, Section 7 offers no exception for pure-speech-based nuisances, and surely we cannot rewrite the Constitution to create one.

[22] Each of the dissents asks us to take a different path. First, Justice Wecht, citing no Pennsylvania authority other than his own dissent in a First Amendment case, asserts our analysis of Article I, Section 7 should proceed "as it does in other cases involving restrictions on speech, by considering the 'fit' between the injunction's legitimate objectives and the restraints it imposes on speech" and then by "apply[ing] either strict or intermediate scrutiny, depending upon whether the restriction is content-based or content-neutral." Dissenting Opinion (Wecht, J.) at 22. But this position ignores that "Article I, §7 has its own rich, independent history" and that it "affords greater protection for speech and conduct than does the First Amendment." Pap's A.M., 812 A.2d at 596. We are unwilling to disregard or overrule that long line of historical cases, including William Goldman Theatres and Willing.

For his part, Justice Brobson "conclude[s] that the trial courts of this Commonwealth have the authority to enjoin residential speech protected by Article I, Section 7 . . . that rises to the level of a private nuisance and disrupts the quiet enjoyment of a neighbor's home." Dissenting Opinion (Brobson, J.) at 1. In support of this position he relies on Klebanoff, a Superior Court decision that (1) has never been cited by this Court, (2) clearly treated Article I, Section 7 as coterminous with the First Amendment, and (3) offered no discussion of prior restraints under our state charter. He also cites Frisby, a First Amendment case, and Rouse, another unapproved Superior Court case decided exclusively under the First Amendment. None of these sources offer any insight into Article I, Section 7 or this Commonwealth's unique history when it comes to speech. In that vein, we strongly disagree that Willing is "of little-to-no precedential value to the present matter" simply because it did not involve the right to quiet enjoyment of the home. Id. at 15. Willing's analysis of Article I, Section 7 is directly on point and binding.

To the extent this case, unlike Willing, requires "a balancing of rights[,]" id., we observe that the dissents have not actually identified a competing constitutional right. Instead, they generally invoke the High Court's oft-repeated line from Carey (which involved a state statute, not a court injunction flowing from a private dispute between neighbors) that a "State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized

society." 447 U.S. at 471. See Dissenting Opinion (Wecht, J.) at 23; Dissenting Opinion (Brobson, J.) at 21. While we do not question the legitimacy of this State interest, the competing constitutional interests presently before us are the Galapos' free speech rights under Article I, Section 7, and the Oberholzers' (and to some extent the Galapos') rights under Article I, Section 1. See Pa. Const. art. I, §1 ("All men . . . have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, [and] of acquiring, possessing and protecting property[.]"). With respect to those constitutional rights, our careful examination leads us to conclude the standard above reflects the appropriate balance in cases involving pure residential speech.

[23] An example proves the point. Imagine an individual flies a Pride flag with the phrase "Love is Love" in his yard to commemorate Pride Month. Imagine also that the individual's next-door neighbor observes a religion that is strongly opposed to Pride Month and the view that "love is love." In the eyes of the neighbor, the Pride flag may come off as deeply offensive, perhaps even targeted. Under Justice Brobson's test, that subjective belief alone would provide a sufficient basis for a judge to order the flag removed. And that decision, according to Justice Brobson, would be unassailable on appeal. See Dissenting Opinion (Brobson, J.) at 18 (suggesting "we must accept the trial court's factual findings" that the Galapos' signs disrupt the quiet enjoyment of the Oberholzers' home) (internal quotations, emphasis, and citation omitted). Respectfully, we think the citizens of this Commonwealth would be quite surprised to learn that, notwithstanding the robust protection that Article I, Section 7 affords, they can be hauled into court on the whim of any offended neighbor and judicially forced to suppress their pure residential speech simply because that speech subjectively disrupts the neighbor's quiet enjoyment of his home. As we see it, the problems with Justice Brobson's approach are manifest: it sets the bar too low; it offers no meaningful or administrable legal standard; and it essentially encourages Pennsylvanians to rush to court with their private disputes involving speech, which are often grounded in hotly contested social issues, while simultaneously inviting judges to make content-based social judgment calls. None of these qualities is a virtue. More importantly, they cannot be squared with Article I, Section 7.

[24] Plainly, Justice Brobson is mistaken in asserting we "displace[ ] the trial court's factual findings[.]" Dissenting Opinion (Brobson, J.) at 19; see id. at 18 (the majority "substitutes its contrary assessment of the harm to the Oberholzers with that of the trial court"). In fact, we take the court's findings at face value. Even so, they do not satisfy the applicable constitutional standard. As for Justice Brobson's objection to our decision to make this pure legal assessment ourselves rather than remand to the trial court, see id. at 17, we note that, in free speech cases, "an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." Int. of J.J.M., 265 A.3d 246, 270 (Pa. 2021) (internal quotations and citations omitted). That is precisely what we have done.

[25] It does not matter that the trial court

only ordered the Galapos to turn their signs around and make them opaque rather than take them down entirely. By preventing the Galapos from directing their message to one of their intended audiences - the Oberholzers - the court violated the Galapos' speech rights. See City of Ladue, 512 U.S. at 57 ("a person who puts up a sign at her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means") (emphasis in original); Erznoznik, 422 U.S. at 210 ("the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer"); Consol. Edison Co. of NY v. Pub. Serv. Comm'n of NY, 447 U.S. 530, 541-42 (1980) ("Where a single speaker communicates to many listeners, the First Amendment does not permit the government to prohibit speech as intrusive unless the 'captive' audience cannot avoid objectional speech."); see also 303 Creative LLC v. Elenis, 600 U.S. 570, 586, 603 (2023) ("all persons are free to think and speak as they wish, not as the government demands[,]" "regardless of whether the government considers [the] speech sensible and well intentioned or deeply misguided, and likely to cause anguish or incalculable grief") (internal quotations and citations omitted). To put it simply, "[n]o matter how laudably inspired or highly conceived" the court's injunction order was, "its restrictions impinge upon the freedoms of the" Galapos to exercise free speech protected by Article I, Section 7, so "it cannot stand." William Goldman Theatres, 173 A.2d at 62; see Spayd, 113 A. at 72-73 (freedom of speech "cannot lawfully be infringed, even momentarily"; "a temporary giving up or denial of an inalienable right . . . is as void as though permanent in character").

[26] We say "generally" (in fact, we've said this word a few times now, which should highlight the caveat's importance) because different circumstances might yield different results in other cases - for example, if the dispute concerns more than just pure residential speech, or if a litigant demonstrates a true deprivation of residential privacy consistent with the standard outlined above, or successfully invokes the right to reputation under Article I, Section 1. See, e.g., Phila. Newspapers, Inc., 387 A.2d at 433 ("government may, when necessary, protect personal liberties even where enforcement of those liberties may subordinate in limited instances the constitutional interests of others"); Norton, 860 A.2d at 58 (describing the "seesawing balance between the constitutional rights of freedom of expression and of safeguarding one's reputation"; "protection of one of those rights quite often leads to diminution of the other"). Cf. Dissenting Opinion (Wecht, J.) at 14-15 (contending our rule somehow "blocks equity courts from preventing further reputational damage" even though the Oberholzers never invoked the right to reputation). And, of course, trial courts remain empowered to enjoin those expressions which cross the line from protected to unprotected speech, because they fall outside of Article I, Section 7's protective ambit. See, e.g., Davidson, 938 A.2d at 215 ("freedom of speech has its limits; it does not embrace . . . defamation, incitement, obscenity, and pornography produced with real children") (internal quotations and citation omitted); Kirmse, 166 A. at 570 ("the right of communication, or persuasion, [is protected] provided [one's] appeals [are] not abusive, libelous,

or threatening"); Warren, 118 A.2d at 171 ("equity will step in to halt the club, the brickbat or flying stone which substitutes intimidation for argument and terror for common sense"). Finally, because this case does not involve defamation or a jury verdict, it cannot fairly be construed as rejecting the view that "permanent injunctions can be issued after a jury has determined that the specific statements sought to be enjoined are in fact defamatory[.]" Dissenting Opinion (Wecht, J.) at 5. As Justice Wecht points out, our precedent arguably supports that position. See id., citing Balt. Life Ins. Co., 51 A. at 1024 (injunction sought in relation to claims of slander or libel properly denied where, inter alia, the claims were not "first [ ] established by the verdict of a jury"). We simply have no occasion to consider that separate issue in this case.

[27] *Because "[w]e rest decision in this case upon our own Constitution, law and public policy[,]" Locust Club, 155 A.2d at 34, we do not reach or address the First Amendment issues presented.*

[1] *Willing v. Mazzocone ("Willing II"), 393 A.2d 1155, 1158 (Pa. 1978) (plurality).*

[2] *Brief for the Galapos at 26 ("[I]t does not and should not matter whether a plaintiff bases his or her request for injunctive relief on allegations of defamation, false light, nuisance, or any other tort.").*

[3] *See, e.g., Majority Opinion at 46 (expanding the no-injunction rule to encompass all torts "because the text of Article I, Section 7 does not distinguish between defamation or any other tort involving speech").*

[4] *See Pa. Const. art. I, § 7 ("The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.").*

[5] *Erwin Chemerinsky, Injunctions in Defamation Cases, 57 Syracuse L. Rev. 157, 167 (2007) (explaining that the no-injunction rule "was established in eighteenth-century England, well before the American revolution"); David S. Ardia, Freedom of Speech, Defamation, and Injunctions, 55 Wm. & Mary L. Rev. 1, 18 (2013) ("The no-injunction rule has been a fixture of Anglo-American law for more than three centuries. Well before the First Amendment was ratified, it was taken as a given by judges and lawyers that injunctions, including permanent injunctions following trial, were not permissible remedies in defamation actions."); Note, The Restraint of Libel by Injunction, 15 Harv. L. Rev. 734, 734 (1902) ("For one hundred and fifty years there has existed a tradition having the force of absolute law that equity has no jurisdiction to enjoin a libel.").*

[6] *Ardia, supra note 4, at 20.*

[7] *Id.*

[8] *"When American courts initially invoked the no-injunction rule, the reason most often cited was the conviction that a court of law did not have the power to issue an injunction." Id. (emphasis added); id. at 21 ("American judges were quick to dismiss requests for injunctions directed at defamatory speech, and the earliest decisions almost uniformly did so on the basis that the court had no jurisdiction to grant equitable relief of any kind."); Balboa Island Vill. Inn, Inc. v. Lemen, 156 P.3d 339,*

350 (Cal. 2007) (explaining that the no-injunction rule "was created more as an offshoot of a jurisdictional dispute than as a calculated understanding of the needs of a free press").

[9] Ardia, supra note 4, at 21-22; see Eugene Volokh, Anti-Libel Injunctions, 168 U. Pa. L. Rev. 73, 90 (2019) ("Many past cases do say that 'equity will not enjoin a libel,' but that was a descriptive claim, describing a rule that no longer applies in many states.").

[10] Willing II, 393 A.2d at 1159 (Roberts, J., concurring) ("One of the underlying justifications for equity's traditional refusal to enjoin defamatory speech is that in equity all questions of fact are resolved by the trial court, rather than the jury. Thus, it deprives appellant of her right to a jury trial on the issue of the truth or falsity of her speech."); Preston Hollow Cap. LLC v. Nuveen LLC, 216 A.3d 1, 11 (Del. Ch. 2019) ("The original intent behind the rule was to give jurors, rather than judges, the ability to determine whether statements were defamatory.").

[11] Under our legal standard governing permanent injunctions, a party seeking an injunction must demonstrate that they have a clear legal right to relief and no other adequate remedy at law, meaning that monetary damages are insufficient to make the plaintiff whole. Liberty Place Retail Assocs., L.P. v. Israelite Sch. of Universal Prac. Knowledge, 102 A.3d 501, 505-06 (Pa. Super. 2014); Mazzocone v. Willing ("Willing I"), 369 A.2d 829, 832 (Pa. Super. 1976) (noting that one "argument often invoked for denying injunctive relief in defamation cases is that the plaintiff has an adequate remedy at law"), overruled by Willing II, 393 A.2d at 1158 (plurality).

[12] Willing I, 369 A.2d at 832 ("The final reason frequently advanced for equity's reluctance to enjoin defamation is that an injunction against the publication would be unconstitutional as a prior restraint on free expression."), overruled by Willing II, 393 A.2d at 1158 (plurality).

[13] Ardia, supra note 4, at 22 ("The aphorism that 'equity will not enjoin a libel' was essentially an assertion that a judge, acting alone, could not censor speech, and that juries were a necessary bulwark against government encroachment into fundamental liberties.").

[14] Citizens' Light, Heat & Power Co. v. Montgomery Light & Water Power Co., 171 F. 553, 556 (C.C.M.D. Ala. 1909).

[15] Baltimore Life Ins. Co. v. Gleisner, 51 A. 1024, 1024 (Pa. 1902).

[16] Id. at 1024.

[17] University of North Carolina School of Law Professor David S. Ardia, whose scholarship has greatly informed my understanding of this case, has sorted injunctions into four categories based on their breadth. Type I and Type II injunctions, which courts universally reject, prohibit the defendant from making "any statements" or "any defamatory statements" about the plaintiff. Ardia, supra note 4, at 52-53. Type III injunctions "prohibit a party from publishing certain enumerated statements about the plaintiff without limiting the injunction to the specific statements that have been found to be defamatory." Id. at 54. For example, a Type III injunction "might order the defendant to take down an entire website, even though only a few statements on the site have been found to be defamatory." Id. at 54-55.

Lastly, a Type IV injunction "prohibits further publication, or orders the removal of the specific statements a court or jury has found are defamatory." Id. at 56. In Professor Ardia's view, only Type IV injunctions are likely permissible. Id. at 58. My own views dovetail with this broad protection of speech rights. See S.B. v. S.S., 243 A.3d 90, 120 (Pa. 2020) (Wecht, J., dissenting). Ironically, and inexplicably, this Court today extends unwarranted protection to the Galapos' speech, notwithstanding its recent denial of basic speech rights to the appellant mother in S.B. Id. at 107 (majority describing as content-neutral a gag order that prevented a mother (and her attorneys) in a contentious custody case from "speak[ing] publicly or communicat[ing] about" the case). Readers will search in vain for a governing principle that can harmonize or reconcile these two majority opinions.

[18] *See Volokh, supra note 8, at 77 ("Thirty-four states allow such injunctions, at least in some situations, and only six have generally rejected them."); id. ("If 'equity will not enjoin a libel' was ever a firm rule, it isn't so now." (footnote omitted)); McCarthy v. Fuller, 810 F.3d 456, 464 (7th Cir. 2015) (Sykes, J., concurring) ("An emerging modern trend . . . allows for the possibility of narrowly tailored permanent injunctive relief as a remedy for defamation as long as the injunction prohibits only the repetition of the specific statements found at trial to be false and defamatory."). As I explain in greater detail below, the requirement that the injunction restrict only speech adjudged to be defamatory also ensures that the injunction will not constitute an unconstitutional prior restraint.*

[19] *Willing I, 369 A.2d at 832 (noting, among other things, that reputational damages may be difficult to prove or measure and that bringing repeated legal actions against an incessant defamer "would be a pointless gesture" when the defendant is judgment proof), overruled by Willing II, 393 A.2d at 1158 (plurality).*

[20] *McCarthy, 810 F.3d at 462.*

[21] *Id.*

[22] *Douglas Laycock & Richard L. Hasen, Modern American Remedies 346 (5th ed. 2018) ("Does it make any sense at all to say that a damage judgment is adequate if it can never be collected? The Pennsylvania rule is in a tiny minority; it might not even be the rule in Pennsylvania if the issue were squarely presented outside a free speech context."); Estella Gold, Does Equity Still Lack Jurisdiction to Enjoin A Libel or Slander?, 48 Brook. L. Rev. 231, 243 (1982) ("[N]otwithstanding the manifest inadequacy of the legal remedy in [Willing], the Pennsylvania court refused to provide the limited equitable protection sought by the plaintiff. Ironically, then, this formalistic reliance on an age-old equitable maxim, rather than doing justice, deprived the plaintiffs of all forms of redress and permitted the defendant to continue to act with impunity."); Rodney A. Smolla, 2 Law of Defamation § 9:87 (2d ed. 1999 & Supp. 2024) ("The idea that damages are an adequate remedy at law begs the essential question-a convincing case can in fact be made that defamation is precisely the form of nonquantifiable injury for which damages are ill-suited, and that equitable relief would prevent reputational damage that might never be truly restored by money.").*

[23] *Ardia, supra note 4, at 11. "A database of*

libel lawsuits against bloggers maintained by the Media Law Resource Center, for example, revealed a 216 percent increase in cases filed between 2006 and 2009." Id. at 12; id. at 11 ("[S]o few defamation cases have been filed against the mass media in the past five years that several of the nation's leading media lawyers have suggested that libel law is dead. For example, George Freeman, vice president and assistant general counsel at The New York Times, says that for the first time in his twenty-nine years at the Times there are no active domestic libel suits." (footnotes omitted)); see also Eugene Volokh, What Cheap Speech Has Done: (Greater) Equality and Its Discontents, 54 U.C. Davis L. Rev. 2303, 2306 (2021) ("Say what you will about the old mainstream media, but it didn't offer much of a voice to people obsessed with private grievances, or to outright kooks, or to the overly credulous spreaders of conspiracy theories. In 1990, someone who wanted to educate the world about an ex-lover's transgressions would have found it hard to get these accusations published, unless the ex-lover was famous.").

[24] Ardia, supra note 4, at 17-18.

[25] Id. at 17.

[26] Id. at 12-13.

[27] Id. at 13-14.

[28] Id. at 16 (explaining that Section 230 "grants operators of websites and other interactive computer services broad protection from defamation claims based on the speech of third parties, including protection from injunctive relief" (footnotes omitted)); see 47 U.S.C. § 230. >

[29] See Erwin Chemerinsky, Tucker Lecture, Law and Media Symposium, 66 Wash. & Lee L. Rev. 1449, 1451 (2009) ("The democratization of access to the media is inherently different than anything that has preceded it."). Although Dean Chemerinsky's earlier writings on the subject had embraced the idea that money damages constitute an adequate legal remedy in defamation cases, his views have evolved, at least "with regard to the Internet." Id. at 1460; compare id. ("I do not see any reason to continue the traditional rule that there can never be an injunction in defamation cases. I do not believe that damages will necessarily be an adequate remedy. There certainly can be an instance where the defendant has no assets and can continue to engage in the speech as long as they are willing to take the risk of a damage judgment against them. I think, though, that an injunction has to be narrowly tailored. It has to be limited to specific speech that is proven to be false."), with Chemerinsky, supra note 4, at 168-70 (arguing that damages are a sufficient remedy for plaintiffs in defamation cases).

[30] See generally Jessica Ice, Defamatory Political Deepfakes and the First Amendment, 70 Case W. Rsrv. L. Rev. 417, 454 (2019) (arguing that "courts should draw lessons from both obscenity and copyright law to allow some narrowly crafted permanent injunctions against deepfakes").

[31] Willing I, 369 A.2d at 832 ("The final reason frequently advanced for equity's reluctance to enjoin defamation is that an injunction against the publication would be unconstitutional as a prior restraint on free expression."), overruled by Willing II, 393 A.2d at 1158 (plurality).

[32] United States v. Quattrone, 402 F.3d 304, 309 (2d Cir. 2005).

[33] William O. Bertelsman, Injunctions Against Speech and Writing: A Re-Evaluation, 59 Ky. L. J. 319, 329 (1970).

[34] See supra note 16 (discussing Professor Ardia's four categories of injunctions).

[35] See Steve Tensmeyer, Constitutionalizing Equity: Consequences of Broadly Interpreting the "Modern Rule" of Injunctions Against Defamation, 72 N.Y.U. Ann. Surv. Am. L. 43, 60 (2017) ("[T]he modern view is simply that once a court has evaluated certain speech, it can enjoin repetitions of that speech."); see, e.g., Balboa Island Vill. Inn, 156 P.3d at 343 ("[A]n injunction issued following a trial that determined that the defendant defamed the plaintiff that does no more than prohibit the defendant from repeating the defamation, is not a prior restraint and does not offend the First Amendment.").

[36] Chemerinsky, supra note 4, at 171 ("An injunction that is limited to preventing repetition of the specific statements already found to be defamatory is useless because a defendant can avoid its restrictions by making the same point using different words without violating the court's order.").

[37] Id.

[38] See New York Times Co. v. United States, 403 U.S. 713, 744 (1971) (Marshall, J., concurring) ("It is a traditional axiom of equity that a court of equity will not do a useless thing[.]").

[39] Chemerinsky, supra note 4, at 171 ("A statement that was once false may become true later in time.").

[40] Tensmeyer, supra note 34, at 61 ("Chemerinsky's concern is that someone might be enjoined from making a statement that could become true if circumstances change, but this concern evaporates if the speech concerns only past events. For example, the statement 'LeBron James has never won an NBA championship' is not only false, it will always be false.").

[41] Ardia, supra note 4, at 18.

[42] Willing II, 393 A.2d at 1158 (plurality) ("Our resolution should also render unnecessary any discussion of the Superior Court's proposed exception to the so-called traditional view that equity lacks the power to enjoin the publication of defamatory matter.").

[43] 947 F.2d 666 (3d Cir. 1991).

[44] Id. at 676.

[45] Id. at 678 ("Whatever the reason, the fact remains that the Supreme Court of Pennsylvania appears entirely comfortable with the common-law bar; hence, we must tread lightly and carefully before recognizing an exception to this general rule in a diversity case turning on Pennsylvania law.").

[46] Id.

[47] Willing II, 393 A.2d at 1158 (plurality) ("Our resolution should also render unnecessary any discussion of the Superior Court's proposed exception to the so-called traditional view that equity lacks the power to enjoin the publication of defamatory matter."); id. at 1158-59 (Roberts, J., concurring) (disagreeing with "the Superior Court's radical departure from the long-standing general rule that equity will not

enjoin a defamation"); id. at 1160 (Pomeroy, J., concurring) (incorporating by reference Judge Jacobs' Superior Court dissent); see Willing I, 369 A.2d at 835-37 (Jacobs, J., dissenting) (arguing that "the injunction issued in the case at bar" violates "the general rule that equity will not enjoin a defamation").

[48] See Majority Opinion at 39 n.17 (noting that the concurring justices in Willing II agreed with the lead opinion's prior restraint analysis).

*[49] See Puello v. Crown Heights Shmira, Inc., No. CIV.A. 3:14-0959, 2014 WL 3115156, at *2 (M.D. Pa. July 7, 2014) (citing Kramer for the proposition that Pennsylvania follows the common law rule that "equity will not enjoin a libel"); Graboff v. Am. Ass'n of Orthopaedic Surgeons, No. CIV.A. 12-5491, 2013 WL 1875819, at *5 (E.D. Pa. May 3, 2013) (denying injunction relief for a false light claim because "[t]he Third Circuit in Kramer predicted that the Pennsylvania Supreme Court will adhere to the traditional, common law principle that equity will not enjoin a defamation"); Angelico v. Lehigh Valley Hosp. Inc., No. 1997-C-1671, 2005 WL 5163656 (Pa. Com. Pl. 2005) (citing Kramer and stating that, "in keeping with the venerable common-law rule that equity will not enjoin a defamation, courts of this Commonwealth will not accord injunctive relief to proscribe publication of libelous materials").*

[50] Brief for the Galapos at 25.

[51] Willing I, 369 A.2d at 831 (concluding that "blind application of the [no-injunction rule] would be antithetical to equity's historic function of maintaining flexibility and accomplishing total justice whenever possible."), overruled by Willing II, 393 A.2d at 1158 (plurality).

[52] Balt. Life Ins. Co., 51 A. at 1024.

[53] Majority Opinion at 46.

[54] See Volokh, supra note 8, at 77; Balt. Life Ins. Co., 51 A. at 1024.

[55] Keep in mind that it is typically not money damages that defamation plaintiffs really desire. Ardia, supra note 4, at 15-16 ("[R]esearch has shown that money is not what defamation plaintiffs want most. A study conducted in the 1980s by Professor Randall Bezanson found that only 20 percent of plaintiffs sued to obtain money as compensation for their reputational harms. Instead, Professor Bezanson's research revealed that what libel plaintiffs desire most is a correction or retraction." (footnotes omitted)). Indeed, the cost to litigate an average defamation case can easily exceed any provable economic loss stemming from the tort. David A. Anderson, Is Libel Law Worth Reforming?, 140 U. Pa. L. Rev. 487, 542 (1991) (stating that "[v]ery few libel plaintiffs suffer enough provable pecuniary loss to justify litigating" their case).

[56] Majority Opinion at 47 (holding that equity courts "generally lac[k] the power to grant injunctive relief" to enjoin speech "regardless of the nature of the underlying cause of action").

[57] Id. at 46.

[58] Smolla, supra note 21, § 9:89 ("When the

tortious conduct can be characterized as implicating torts other than defamation, injunctive relief tends to be more readily available.").

[59] Id. ("Where the defamation is incident to some other legal invasion for which injunctive relief is available, such as a trespass, or violent picketing, or fraud, both the larger tortious misconduct and the incidental defamation may be enjoined."); Test Masters Educ. Servs., Inc. v. Singh, 428 F.3d 559, 580 (5th Cir. 2005) (explaining that "courts do have the power to enjoin harassing communication" and "also have the power to enjoin repeated invasions of privacy"); see generally Haverbush v. Powelson, 551 N.W.2d 206, 207 (Mich. Ct. App. 1996) (upholding an injunction in an intentional infliction of emotional distress case).

[60] Misunderstanding a footnote in Professor Ardia's article on injunctions in defamation cases, the Majority suggests that six other states have constitutional prohibitions on "speech-related injunctions" resembling the one that the Majority creates today. Majority Opinion at 46 n.20. That's incorrect. In the quoted portion of his article, Professor Ardia is discussing state court decisions that could impede adoption of the "modern approach" to injunctions in defamation cases, whereby certain narrowly tailored injunctions are permissible so long as they are issued after a final determination that the speech is defamatory. Ardia, supra note 4, at 50 (stating that "no state supreme court has expressly rejected [the modern] approach as violative of the federal Constitution, although several courts have held that the free speech guarantees in their state constitutions pose an independent bar to injunctive relief in defamation cases." (emphasis added)).

Contrary to the Majority's assertion, none of the states that Professor Ardia identifies have bans on "speech-related injunctions" like the one that the Majority invents today. The Majority's claim that California and Montana have broad constitutional prohibitions on enjoining "speech" is especially risible, since those states have led the way in permitting injunctions in defamation cases. Balboa Island Vill. Inn, 156 P.3d at 352 (upholding an injunction on libelous speech); St. James Healthcare v. Cole, 178 P.3d 696, 705 (Mont. 2008) (citing Balboa and holding that "speech and conduct that is intended to embarrass, annoy, harass or threaten" may be enjoined). As for the other four states that the Majority cites, every one of them lacks judge-made rules resembling the broad and unforgiving one that the Majority creates today. Kinney v. Barnes, 443 S.W.3d 87, 99 (Tex. 2014) (declining to overturn the no-injunction rule but stating that the rule would not prevent an injunction prohibiting the defendant from repeating defamatory statements); Sid Dillon Chevrolet-Oldsmobile-Pontiac, Inc. v. Sullivan, 559 N.W.2d 740, 747 (Neb. 1997) (holding that injunctive relief may be available in defamation cases when there has been a prior adversarial determination that the speech in question was defamatory or when "injunctive relief is essential for the preservation of a property right"); Vartech Sys., Inc. v. Hayden, 951 So.2d 247, 262 n.22 (La.App. 1 Cir. 2006) (stating that permanent injunctive relief is available in defamation cases "after a trial on the merits"); see Volokh, supra note 8, at 141 n.306 (citing several Missouri cases in which anti-libel injunctions were issued). If

there existed any state court decisions establishing broad constitutional prohibitions on "speech-related injunctions," the Majority would surely cite them. It doesn't. Because it can't.

*[61] See, e.g., Erwin Chemerinsky, Tucker Lecture, Law and Media Symposium, 66 Wash. & Lee L. Rev. 1449, 1460 (2009) ("I do not see any reason to continue the traditional rule that there can never be an injunction in defamation cases."); Hill v. Petrotech Res. Corp., 325 S.W.3d 302, 308 (Ky. 2010) ("Under the modern rule, once a judge or jury has made a final determination that the speech at issue is defamatory, the speech determined to be false may be enjoined."); In re Conservatorship of Turner, No. M2013-01665-COA-R3CV, 2014 WL 1901115, at *20 (Tenn. Ct. App. May 9, 2014) (unpublished) ("[W]e adopt the 'modern rule' and hold that defamatory speech may be enjoined after a determination that the speech is, in fact, false.").*

[62] Majority Opinion at 47 n.20 ("To reiterate, the present question is whether Article I, Section 7-not the common law-generally prohibits courts from enjoining speech.").

[63] Id. at 39 n.17 (quoting Willing II, 393 A.2d at 1157).

[64] The Majority itself seems to admit that the four Justices who made up the plurality in Willing II agreed only that the challenged injunction was a prior restraint. Majority Opinion at 39 n.17 (noting that the concurring Justices in Willing II agreed with the lead opinion that the injunction was a prior restraint).

[65] See Willing II, 393 A.2d at 1158 ("Our resolution should also render unnecessary any discussion of the Superior Court's proposed exception to the so-called traditional view that equity lacks the power to enjoin the publication of defamatory matter.").

[66] The Majority's embrace of this unprecedented rule is an unforced error in the sense that the rule is entirely unnecessary to today's holding. The Majority could have simply rested its decision on its separate conclusion that the injunction here is a prior restraint. See Majority Opinion at 45. As I explain below, that conclusion is also wrong. But it is at least rooted in our precedent, unlike the Majority's newly-invented prohibition on equitable relief.

[67] McCarthy, 810 F.3d at 461-62 ("'Prior restraint' is just a fancy term for censorship, which means prohibiting speech before the speech is uttered or otherwise disseminated.").

[68] Org. for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971) ("Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity."); Near v. Minnesota, 283 U.S. 697, 716 (1931) (stating that prior restraints may be permissible in cases involving speech advocating for the overthrow of the government, incitements to violence, obscenity, and certain national security risks such as "the publication of the sailing dates of transports or the number and location of troops").

[69] Pa. Const. art. I, § 7 ("The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and

print on any subject, being responsible for the abuse of that liberty.").

[70] William Goldman Theatres, Inc. v. Dana, 173 A.2d 59, 70 (Pa. 1961) (Eagen, J., dissenting) (emphasis in original).

[71] Majority Opinion at 45.

[72] See William Goldman Theatres, 173 A.2d at 64.

[73] Vance v. Universal Amusement Co., 445 U.S. 308, 316 n.13 (1980) (emphasis in original); Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels., 413 U.S. 376, 390 (1973) ("The special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment.").

[74] Balboa Island Vill. Inn, 156 P.3d at 339 ("Prohibiting a person from making a statement or publishing a writing before that statement is spoken or the writing is published is far different from prohibiting a defendant from repeating a statement or republishing a writing that has been determined at trial to be defamatory and, thus, unlawful. This distinction is hardly novel." (emphasis in original)).

[75] Mark A. Lemley & Eugene Volokh, Freedom of Speech and Injunctions in Intellectual Property Cases, 48 Duke L.J. 147, 170-71 (1998).

[76] S.E.C. v. Wall St. Pub. Inst., Inc., 851 F.2d 365, 370 (D.C. Cir. 1988); see also Sid Dillon Chevrolet-Oldsmobile-Pontiac, Inc. v. Sullivan, 559 N.W.2d 740, 746 (Neb. 1997) ("Some jurisdictions have concluded that an order enjoining further publication of libelous or slanderous material does not constitute a prior restraint on speech where there has been a full and fair adversarial proceeding in which the complained of publications were found to be false or misleading representations of fact prior to the issuance of injunctive relief."); Lothschuetz v. Carpenter, 898 F.2d 1200, 1209 (6th Cir. 1990) (Wellford, J., for the court in part) (upholding an injunction prohibiting "the statements which have been found in this and prior proceedings to be false and libelous"); McCarthy, 810 F.3d at 462 ("Most courts would agree with Judge Wellford that defamatory statements can be enjoined . . . provided that the injunction is no 'broader than necessary to provide relief to plaintiff while minimizing the restriction of expression.'"); Madsen v. Women's Health Ctr., Inc. 512 U.S. 753, 763 n.2 (1994) (concluding that an injunction prohibiting anti-abortion protestors from demonstrating within a 36-foot buffer zone is not a prior restraint and clarifying that "[n]ot all injunctions that may incidentally affect expression [] are 'prior restraints'"); Pittsburgh Press Co., 413 U.S. at 389-90 (holding that an injunction barring the placement of want ads for nonexempt employment in sex-segregated columns is not a prior restraint); Kingsley Books, Inc. v. Brown, 354 U.S. 436, 441-45 (1957) (holding that a content-based injunction prohibiting the distribution of existing (but not future) obscene booklets was not a prior restraint); Tensmeyer, supra note 34, at 60 ("In one sense, it is clear that any injunction will forbid future speech. After all, an injunction cannot order someone not to have said something yesterday. But the modern view is simply that once a court has evaluated certain speech, it can enjoin repetitions of that speech." (footnote omitted)).

[77] This would be considered a Type II injunction under Professor Ardia's framework. Ardia, supra note 4, at 53.

[78] William Goldman Theatres, 173 A.2d at 64.

[79] In this regard, I believe that our case law epitomizes the longstanding criticism that the phrase "prior restraint" sometimes serves as little more than a category label some courts attach to speech restrictions that they have concluded are impermissible for other reasons. See Laurence H. Tribe, American Constitutional Law §§ 12-34, at 1040 (2d ed. 1988) (stating that the Supreme Court "has often used the cry of 'prior restraint' not as an independent analytical framework but rather to signal conclusions that it has reached on other grounds"); cf. Michael I. Meyerson, Rewriting Near v. Minnesota: Creating A Complete Definition of Prior Restraint, 52 Mercer L. Rev. 1087, 1089-90 (2001) ("It can become almost a game for attorneys defending speakers to affix the label of prior restraint on whatever law is being challenged."); id. at 1090 n.12 ("First Amendment expert Floyd Abrams once told a symposium that 'he was very tempted as an advocate, to characterize anything having the vaguest semblance to a prior restraint as a prior restraint, since prior restraints are somewhat of a taboo.'" (quoting Donald Gilmore, Prologue (for "Near v. Minnesota 50th Anniversary Symposium"), 66 Minn. L. Rev. 1, 8 (1981))).

[80] Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622, 642 (1994) ("Our precedents . . . apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content," but only "an intermediate level of scrutiny" when "regulations are unrelated to the content of speech."); S.B., 243 A.3d at 120 (Wecht, J., dissenting) (explaining that an injunction is content-neutral if it does "not seek to ban any subject matter from being protested" but instead seeks to restrict "the excessive tactics used by the protesters, not to stifle the message itself").

[81] Nat'l Inst. of Fam. & Life Advocs. v. Becerra, 585 U.S. 755, 766 (2018).

[82] Madsen, 512 U.S. at 775 (quoting Frisby v. Schultz, 487 U.S. 474, 484 (1988)); id. (referring to the home as "the last citadel of the tired, the weary, and the sick" (quoting Frisby, 487 U.S. at 484)).

[83] It should be obvious that this case involves not merely the Galapos' expressive rights but also the Oberholzers' domestic rights. Most challenging cases arise when important rights come into direct conflict with one another. As Justice Holmes is said to have remarked, "My right to swing my fist ends where your nose begins." See Your Liberty To Swing Your Fist Ends Just Where My Nose Begins, Quote Investigator https://quoteinvestigator.com/2011/10/15/liberty-fist-nose (discussing the origin of this expression).

[84] See Justice Brobson's Dissenting Opinion at 19-21; Oberholzer v. Galapo, 274 A.3d 738, 770 (Pa. Super. 2022) (Stabile, J., concurring) ("I cannot fathom a more narrowly tailored remedy.").

[85] See Chemerinsky, supra note 4, at 171 (arguing that "[a]n injunction that is limited to preventing repetition of the specific statements already found to be defamatory is useless because a defendant

can avoid its restrictions by making the same point using different words without violating the court's order"); New York Times Co., 403 U.S. at 744 (Marshall, J., concurring) ("It is a traditional axiom of equity that a court of equity will not do a useless thing[.]").

[86] Chemerinsky, supra note 4, at 171.

[87] See Majority Opinion at 52. But see Justice Brobson's Dissenting Opinion at 10 (emphasizing that the signs "were not directed toward the public" and that Dr. Galapo himself admitted that "it was irrelevant whether anyone other than the Oberholzers saw the signs" (emphasis omitted)).

[88] Oddly, although Dr. Galapo was spurred to erect his signs by anti-Jewish slurs uttered by the Oberholzers (see Majority Opinion at 2 n.1), almost all of the Galapos' twenty-three signs complained of "racism", and none of them explicitly referred to Jews, Judaism, antisemitism, or anti-Jewish hatred. One sign did read "□ Never Again". Id. at 2-3 n.2. I do not know whether the Galapos chose "racism" as a euphemism for anti-Jewish hatred and, if so, why they chose to obscure the nature of the particular bigotry at hand. Alternatively, the Galapos may consider hostility against Jews as partaking of a racial animus, as it has for Nazis and some other Jew-haters over time. Regardless, while most of the Galapos' signs spoke broadly in terms of "racism," it is important to point out that the signs were erected specifically in response to anti-Jewish hatred, not some generic or generalized "racism". See Simeon Chavel, Jews, Semites, and Antisemitism, University of Chicago (Nov. 3, 2023), https://divinity.uchicago.edu/sightings/articles/jews-semites-and-antisemitism ("Jewish identity cannot be reduced to either the biologizing 'race/ethnicity' or the spiritualizing 'religion,' but the categories themselves of race and religion are each inflected by the other. Instead of conceptualizing groupings or identities as reducible to single and fixed characteristics, we need an approach that recognizes the multifaceted nature of identity and the fluid, circumstantial dynamics of groups. We would also do well to refer to hatred of Jews and things Jewish in those very terms and to cease using the esoteric, coded, misleading, and deeply troubled terms of 'semitic' identity and 'antisemitic' sentiment and behavior altogether."); Yair Rosenberg, Are Jews a Race?, The Atlantic (Feb. 1, 2022), https://www.theatlantic.com/newsletters/archive/2022/02/are-jews-a-race-whoopi-goldberg-holocaust/676814 ("[P]eople have trouble fitting Jews into their usual boxes. They don't know how to define Jews, and so they resort to their own frames of reference, like 'race' or 'religion,' and project them onto the Jewish experience. But Jewish identity doesn't conform to Western categories, despite centuries of attempts by

society to shoehorn it in. This makes sense, because Judaism predates Western categories.").

[89] See, e.g., Pete DeLuca, Dozens rally against antisemitic messaging in Squirrel Hill, WPXI (Aug. 2, 2024), https://www.wpxi.com/news/local/dozens-rally-against-antisemitic-messaging-squirrel-hill/WBDWSHSY7ZEM3O6JXUYGXGSXHA; Adam Babetski, Pittsburgh Jewish community condemns antisemitism, vandalism at 'Fight with Light' rally, Pittsburgh Post-Gazette (Aug. 2, 2024), https://www.post-gazette.com/local/city/2024/08/02/chabad-vandalism-graffiti-pittsburgh-jewish-community-antisemitism/stories/202408020109; David Rullo, Justice David Wecht urges activism in the face of antisemitism, Jewish Chronicle (Apr. 19, 2024), https://jewishchronicle.timesofisrael.com/justice-david-wecht-urges-activism-in-the-face-of-antisemitism; Joel Cohen, Justice Wecht Breaks Judicial Silence on Anti-Semitism, Tablet (Apr. 2, 2019), https://www.tabletmag.com/sections/arts-letters/articles/justice-david-wecht-antisemitism; David Wecht, The fight against Jew-hatred is everyone's fight, Pittsburgh Post-Gazette (Nov. 2, 2023), https://www.post-gazette.com/opinion/guest-columns/2023/11/02/wecht-hamas-terrorism-antisemitism-gaza/stories/202311010019; David Wecht, Young Jews, stand up for your people!, Jewish News Syndicate (Apr. 27, 2022), https://www.jns.org/young-jews-stand-up-for-your-people; David Wecht, We all must fight hatred in our daily lives, Pittsburgh Post-Gazette (Oct. 30, 2018), https://www.post-gazette.com/opinion/Op-Ed/2018/10/30/We-all-must-fight-hatred-in-our-daily-lives/stories/201810300025; David Wecht, Jews and justice: some contemporary thoughts, Jewish Chronicle (May 4, 2018), https://jewishchronicle.timesofisrael.com/jews-and-justice-some-contemporary-thoughts; David Wecht, Heed Brandeis' call to be better Jews, Jewish Chronicle (Jun. 2, 2016), https://jewishchronicle.timesofisrael.com/heed-brandeis-call-to-be-better-jews.

[1] Article I, Section 7 of the Pennsylvania Constitution provides, in pertinent part: "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

[2] Notably, although the appellant was arrested in a county courthouse, the California criminal statute was widely applicable to any location.

[3] The Majority suggests the right to reputation in Article I, Section 1 of the Pennsylvania Constitution was at play in Willing (see Majority Op. at 45 n.20), but the right to reputation does not inhere in private defamation cases. Again, there is no constitutional right not to be defamed.

[4] Contrary to the Majority's suggestion, moreover, this case does not concern enjoining residential speech based on one person's subjective dislike of that speech. (See Majority Op. at 52 n.23.) Rather, this case is based upon a private nuisance-i.e., speech that disrupts a neighbor's quiet enjoyment of his home. Further, while the Majority criticizes my standard as being too low, its own legal standard, as set forth above, is just as likely to allow a neighbor to

"haul[] [another landowner] into court" after taking offense to the landowner's residential speech. (Id.) Our organic charter guarantees access to the courts, but it does not guarantee success, Pa. Const. art. 1, § 11, and I think that the citizens of Pennsylvania would "be quite surprised to learn" that they are barred from seeking a remedy to a private nuisance in court simply because speech is at issue. (See id.) As a safeguard, the trial courts of this Commonwealth are well equipped to determine whether a person's residential speech disrupts a neighbor's use of his property just as trial courts do in other nuisance cases and to sanction frivolous lawsuits where necessary.

WESTTOWN TOWNSHIP PLANNING COMMISSION
MEETING MINUTES

Stokes Assembly Hall, 1039 Wilmington Pike
Wednesday, December 4, 2024 – 7:00 PM

Present

Commissioners, Jack Embick (JE), Tom Sennett (TS), Brian Knaub (BK), Jim Lees (JL), Joseph Frisco (JF), and Kevin Flynn (KF). Russ Hatton (RH) was absent. Executive Assistant Pam Packard was also present.

Call to Order and Pledge of Allegiance

Mr. Embick called the meeting to order at 7:05 PM.

Adoption of Agenda (TS/JL) 6-0

Mr. Sennett made a motion to adopt the agenda. Mr. Lees seconded. All were in favor of the motion.

Approval of Minutes

1. Mr. Sennett made a motion to approve the meeting minutes from October 23, 2024. Mr. Lees seconded. Mr. Embick noted two typos. All were in favor to approve the minutes with changes. (TS/JL) 6-0.

2. Mr. Flynn made a motion to approve the minutes from November 6, 2024. Mr. Lees seconded. The motion passed 5-0, with Mr. Embick abstaining because he was not in attendance at the November 6 meeting. (KF/JL) 5-0

Announcements

Mr. Embick made the following announcements:

1. The settlement proposal for the Stokes Estate conditional use application has been approved by the Board on November 18, 2024.

2. The Preliminary/Final Land Development for Chase Bank at the Marketplace shopping center was presented and approved by the Board on December 2, 2024.

3. Chester County Hazard Mitigation Plan Update is underway.

Public Comment – Non Agenda Items

None.

New Business

1. **ZHB Application – 301 E Pleasant Grove Road**

   Mr. Embick explained that the applicant, Robert Spencer, is seeking variance relief to construct detached garage within two front yards of his property. He summarized that the 1.5 acre parcel is located at the corner of E. Pleasant Grove Road and Westwood Drive in the R-1 Residential Zoning District, and is improved with a single-family detached dwelling, detached garage, and two driveways. Mr. Embick noted that the property is listed on the Westtown Township's Historic Resources Map as Class 2 – resource of local historic value. He announced that the Zoning Hearing Board (ZHB) hearing date is December 23, 2024.

   Mr. James Spencer, the son to Robert Spencer, spoke as power of attorney for his late father, and gave a brief history of the house, which was built in 1772. He has since taken control of the house and has been slowly restoring it. Mr. Spencer provided a site plan, drawing and specifications of the proposed detached garage, emphasizing that it would be completed the in the same beautiful architectural style as the house. Mr. Spencer also wanted to assure

the Commission that he was not planning to run a business out of the detached garage, but rather to use it for his own hobby of restoring old classic books. Lastly, Mr. Spencer wanted to point out that he would not be setting a precedent, as there are already three other homes in his neighborhood that have a separate detached garage on the property. Mr. Spencer wanted to clarify the confusion about his two driveways and the reason behind his variance request. He explained that the eastern most driveway is actually on his neighbor's property, therefore making it impossible to build his detached garage at that location.

Mr. Sennett asked if Mr. Spencer has talked with his neighbors about his variance request. Mr. Spencer replied that he had spoken to his neighbors, and that they are agreeable and willing to speak positively about his request at the hearing if needed. The Commission suggested that he get support from his neighbors in writing prior to the hearing.

Mr. Flynn asked about the height of the detached garage. Mr. Spencer replied that it would be no higher than his existing garage.

Mr. Lees commended Mr. Spencer on the restoration work that has taken place on the house. He then asked if Mr. Spencer could alter the design to move the proposed detached garage 3 feet north and 3 feet east of the proposed site to be more conforming with Township Code. Mr. Spencer said that would not be a problem.

Mr. Embick gave his opinion that Mr. Spencer does not demonstrate that he meets the five requirements for the variance he is seeking, and suggested he seek additional counsel.

After some discussion, Mr. Flynn made a motion to recommend approval to the ZHB of the application for variance relief to construct detached garage within the front yards with the condition that the garage is moved 3 feet north and 3 feet east of the proposed site. Mr. Lees seconded. The motion passed, with Mr. Sennett and Mr. Embick opposing. KF/JL (4-2)

2. **2024 Projects - Summary**
   Ms. Carter had provided a written update on the status of land development projects for the past year. Mr. Embick stated that Mr. Hatton would also be preparing the Commission's end of year report.

Old Business

1. **Ordinance Amendments – Fences**
   Mr. Embick explained that the Township solicitor provided several comments pertaining to proposed changes to the fence ordinance for the Planning Commission to consider. The list of suggested changes to the ordinance, begins with section 170-201 Definitions, and section 170-1505 Fences and Walls.

   Mr. Raman Patel, 811 E. Sage Road, provided a written list of comments to the Commission in response to the proposed revisions to the fence ordinance.

   Mr. Embick stated that Mr. Patel's comments would be forwarded to Ms. Carter for further discussion at the next meeting. Mr. Embick called to table the discussion on ordinance amendments. The Commission agreed.

Public Comment
None.

Reports
Jack Embick provided the BOS report from December 2nd meeting.

Adjournment (TS/BK) 6-0
The meeting was adjourned at 8:16 PM.

Next PC Meeting:

- **December 18, 2024, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Monday December 16, 2024, 7:30 PM –** Jim Lees/Russ Hatton

Respectfully submitted,
Pam Packard
Executive Assistant