



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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August 24, 2004

Jim Reams, City Manager
56 North State, Room 104
Orem, Utah 84057

City of Orem Planning Commission
Richard Rawson, Chair
56 North State
Orem, Utah 84057

Re: City of Orem Sign Ordinance

Gentlemen:

As national and local elections approach, it has come to our attention that the City of Orem zoning regulations include an ordinance that imposes a time limitation on the posting of political signs on residential property. Specifically, it states that political signs shall “[n]ot be erected more than forty-five (45) days prior to the election with which it is associated,” and shall “be removed within ten (10) days following the election.” Sign Ordinance of the City of Orem, § 14-3-3.

The First Amendment to the Constitution guarantees, among several liberties, the freedom of expression. “A special respect for individual liberty in the home has long been a part of our culture and our law; that principle has special resonance when the government seeks to constrain a person’s ability to speak there.”¹ That liberty includes a right to erect signs, “a form of expression protected by the Free Speech Clause” of the First Amendment.² Indeed, yard and window signs are a unique medium that “may have no practical substitute.”³ Although expression in the home is subject to constitutionally appropriate regulation,⁴ the City of Orem’s regulatory scheme is constitutionally flawed.

Most significantly, the ordinance applies different standards to signs depending upon their content or message. For instance, temporal limits appear to differ based on the content of the sign. Issue signs may be put up indefinitely while other types of signs (e.g. political or campaign signs) are limited in how long they may be displayed.

¹ City of Ladue v. Gilleo, 512 U.S. 44, 58 (1994).

² Id. at 48.

³ Id. at 57.

⁴ Id. at 48.

Such “content-based” regulations of expression are “*presumptively unconstitutional*.”⁵ Judicial skepticism of content-based restrictions is particularly acute for expression that occurs on private property. “With rare exceptions, content discrimination in regulations of the speech of private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one.”⁶

In the residential context, we are unaware of any court that has allowed such content-based restrictions, except perhaps for signs with a commercial message. But signs bearing a political, personal or religious message cannot be banned altogether, restricted in duration, or otherwise burdened with an ill-defined regulatory system as has been done by the City of Orem.⁷ We would appreciate receiving your written assurance by Monday, September 6, 2004, that you will cease and desist from enforcing this zoning regulation and will work to change the law to reflect constitutional standards at the next Planning and Zoning meeting.

If the problem is not resolved, we will consider legal action against the town and the Zoning Commission. Should we be forced to take such action, the ACLU of Utah will be entitled to recover costs and attorney fees.

If you would like to discuss the matter, you can reach me through my office at 801.521.9862, ext. 103. We look forward to hearing from you.

Respectfully,

Margaret Plane
Staff Attorney
ACLU of Utah

cc: Paul Johnson, City Attorney
Mayor Jerry Washburn

⁵ Rosenberger v. Rector and Visitors of Univ. of Virginia, 515 U.S. 819, 828-29 (1995); Forsyth County, Georgia v. Nationalist Movement, 505 U.S. 123, 130 (1992); Simon and Schuster, Inc. v. Members of New York State Crime Victims Bd., 502 U.S. 105, 115 (1991).

⁶ Gilleo, 512 U.S. at 59 (O'Connor, J., concurring).

⁷ See, e.g., Whitton v. City of Gladstone, 54 F.3d 1400, 1408 (8th Cir. 1995); Arlington County Republican Comm. v. Arlington County, VA, 983 F.2d 587 (4th Cir. 1993); Sugarman v. Village of Chester, 192 F.Supp.2d 282 (S.D.N.Y. 2002); King Enterprises, 215 F.Supp.2d 891 (E.D. Mich. 2002); Knoeffler v. Town of Mamakating, 87 F. Supp. 2d 322, 327-331 (S.D. NY 2000); North Olmstead Chamber of Commerce v. City of North Olmstead, 86 F. Supp. 2d 755, 764 (N.D. Ohio 2000); Curry v. Prince George's Co., 33 F. Supp. 2d 447, 452 (D. Maryland 1999); Outdoor Systems, Inc. v. City of Merriam, Kansas, 67 F. Supp. 2d 1258 (D. Kansas 1999); Dimas v. City of Warren, 939 F. Supp. 554, 557 (E.D. Mich. 1996); Pica v. Sarno, 907 F. Supp. 795, 800-01 (D. NJ. 1995) McCormack v. Township of Clinton, 872 F. Supp. 1320 (D. NJ. 1994); Loftus v. Township of Lawrence Park, 764 F. Supp. 354 (W.D. Pa. 1991); Orrazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D. NY 1977).